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Supreme Court, U.S.
FILED
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CLERK

No. 00-391

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF FLORIDA,
Petitioner,

vs.

ROBERT A. THOMAS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 5, 2000
CERTIORARI GRANTED JANUARY 8, 2001

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Opinion, Second District Court.....May 15, 1998

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IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR POLK COUNTY

STATE OF FLORIDA,

Plaintiff,

VS. CASE NO. CF96-01296C-XX,

ROBERT THOMAS,

Defendant.
_____/

MOTION TO SUPPRESS EVIDENCE

COMES NOW, the Defendant, ROBERT THOMAS, by and undersigned attorney, and moves this Court to Suppress the Evidence seized in the above styled cause pursuant to Florida Rule of Criminal Procedure 3.190(h). As grounds, therefore, the undersigned would show unto the Court as follows:

1. The evidence sought to be suppressed is the Methamphetamine, assorted narcotic paraphernalia, any and all evidence listed in paragraph (K) of the State's Discovery Response as it pertains to this Defendant, and any and all statements made by the Defendant after the illegal search by the Sheriff's Department of the vehicle he was driving.

2. The search of the vehicle driven by the Defendant was without a lawful search warrant and was not a search incident to a lawful arrest.

3. The Facts on which this motion is based are as follows:

> (a) On Friday, February 28, 1997, at approximately 9:15p.m., Detectives Maney and Macek went to 1003 Meadow Avenue, Lakeland, Florida, to do a "knock and talk" search of the residence without a search without a search warrant. The Defendant, ROBERT THOMAS, pulled his vehicle into the driveway of the residence and exited his vehicle. The Defendant closed the vehicle's door and walked around to the rear, passenger's side of the vehicle. Det. Maney approached him and asked him for his license. Det. Maney ran a warrants check on the Defendant and, after several minutes, he found out there was a warrant on this Defendant. Det. Maney arrests the Defendant, searches the Defendant, places handcuffs on the Defendant, takes him inside the residence, and then goes back outside to search the vehicle the Defendant's driving Upon searching the vehicle, Det. Maney finds suspected Methamphetamine and narcotic paraphernalia. (Maney Depo pg. 21 - 28 attached)

2. The search of the vehicle was done without the Defendant's consent and was not a search incident to a lawful arrest, so all evidence obtained from it should be suppressed. See State v. Bennett, 516 So. 2d 964 (Fla. 5h DCA 1987), and State v. Howard, 538 So. 2d 1279 (Fla. 5th DCA 1989) .

WHEREFORE, the Defendant, ROBERT THOMAS, prays this Honorable Court will enter an Order suppressing those items of evidence set forth in this Motion

and dismiss the charges levied against him in the above cause.

Respectfully submitted this Monday, June 16; 1997.

BRANDON J. RAFOOL, ESQ.
1519 Third Street SE
Winter Haven, Florida 33880
(941) 299-3339
Florida Bar No. 0961744
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been mailed by U.S. Mail to Hardy Pickard, Assistant State Attorney, P.O. Box 9000, Drawer SA Bartow, Florida 33830, this Monday, June 16, 1997.

BRANDON J. RAFOOL, ESQ.

can't come in, could you have put a unit on the street to observe the residence for a sufficient amount of time to go get a search warrant?

A. If we found marijuana or haven't?

Q. If you have even --

A. There were stems at the door.

Q. I'm talking about if you had not been let inside the house.

A. There was no probable cause at that time for a search warrant.

Q. So, you didn't have probable cause until the door was opened and you were inside the house?

A. Until they found the stems. If she had said no then it wouldn't have been up to me. She asked me what we were doing and I would have told them and they would have called the supervisor and said, hey, this is what we have got, what do you want us to do.

Q. You would agree that you could not have observed any stems or other narcotics from a vantage point outside the front door with the door shut, correct?

A. Correct.

Q. Were you present when Robert Thomas arrived on the scene?

A. He drove up beside me.

Q. Do you recall what he was driving?

A. A white Ford Tempo.

Q. Do you recall what actions the officers at the scene took towards him when he initially pulled up?

A. It was me.

Q. What did you do?

A. I was sitting in my car with the door open and he pulled up to my left. He got out, I got out. He walked around the rear of his car and I'm standing there. And I said, hey, how are you doing, do you have a driver's license. I asked him if he had a driver's license, since he had not committed no infraction for me to command his license. So, I asked him.

Q. Why are you so intent on telling me you asked it rather than commanded it? Is there a difference in your mind?

A. Yes. There is nothing wrong with asking anybody anything, if you ask.

Q. But if a police officer asks somebody something and a regular citizen asks somebody something, isn't it more likely for the citizen to comply with the request of the police officer because of the authority of the officer's badge than the person?

A. That don't matter.

Q. It doesn't matter?

A. That's one of the reasons a person thinks.

Q. Have you in certain circumstances of your sixteen years as a law enforcement officer had the occasion to have been out of uniform and asked somebody for something?

A. Out of uniform?

Q. Yes, sir.

A. Like what.

Q. Just say, you -- you are in a store and you have a question about somebody, and you ask them if they could talk to you about it, and you are out of uniform and you ask them about their identity. Are they going to hand you their identification before they know you are a police officer or not?

A. No.

Q. Okay. But when you have your police officer outfit on, your badge, your gun, your uniform, people are readily going to comply with any request that you make, correct?

A. It depends on what the court rules.

Q. But I'm asking you in your experience as a sixteen-year law enforcement officer.

A. Well, some of them will tell you to get stuffed in a heartbeat.

Q. But most people simply hand over their license when you ask them, when you're wearing your uniform, correct?

A. Correct.

Q And in this situation, you asked him for his license and he hands it to you?

A. I asked him If he had a driver's license.

Q. Did you search or look in his vehicle before he handed you his license?

A. No. I asked him if he had a driver's license and he handed it to me.

Q. And what did you do when you got the license?

A. Bring him up on teletype for a warrant check and license check.

Q. Why is that?

A. Maybe his license was suspended, maybe he had a warrant.

Q. But when you ask him for a license, he wasn't driving the vehicle anymore, was he?

A. No.

Q. And you had no reason to stop for traffic infraction or otherwise, did you?

A. No.

Q. So, just kind of a random thing you wanted to do?

A. I do it all the time.

Q. Why did you do it on this occasion?

A. Because he drove up where we were at.

Q. That was a house with narcotics activity in it?

A. Correct.

Q. And you felt he had some type of narcotics activity in that house or that vehicle, correct?

A. I had no idea.

Q. So what happened then? Tell me what happened once you ran his I.D. on teletype.

A. It came back, his license was good, but he had a warrant, violation of probation.

Q. Okay. When you asked for his license, was he on the passenger side of this Tempo, outside of it?

A. He had pulled up, there was a vehicle in front of him and he walked around towards the back. And I'm standing at the passenger rear of his car and he walked up to me.

Q. So, the door was shut on the Tempo once he got out of it, correct?

A. Correct.

Q. And when he walked up to you, he was at the rear

corner of the passenger side of the Ford Tempo?

A. Correct.

Q. Is it four door or two door car?

A. I think it was a two door.

Q. And you get the license, you run it through, and find out he has a warrant on it. What do you do then?

A. Arrest him.

Q. And then what do you do?

A. Search him and the car.

THE COURT REPORTER: Searched the what of the car? I'm sorry.

A. Him and the car.

Q. And, Detective Maney, did you ask him to search that car?

A. I can't remember.

Q. Okay.

A. I can't -- I don't know the information you're asking.

Q. In your report, had you asked him to search the car you would have put it in there, correct?

A. Yes.

Q. And you have reviewed your report thoroughly here today?

A. Correct.

Q. And it is not in there, is it?

A. No.

Q. So it would be more likely to assume that you didn't ask him to search that vehicle?

A. Macek might have.

Q. But regarding you --

A. I don't remember asking him, no.

Q. Okay. Why did you then search the vehicle?

A. Because he was driving it.

Q. Would that be consent in your opinion to search the interior?

A. Correct.

Q. What did you find in the vehicle, sir?

A. A baggie on the driver's door. I can't exactly say where, but I think it was a holder on the bottom of the door.

Q. Uh-huh.

A. And a Marlboro box in the glove with meth in it.

Q. When you found those items, did Mr. Thomas admit ownership of them?

A. I didn't talk to him after that, he was already inside.

Q. So it would be correct to say that he didn't tell you that those are my drugs, that's my cigarette case or anything placing ownership of the drugs or other illegal items --

A. Correct.

Q. - in his possession?

A. Once he had the warrant and was arrested, I took him inside where Murphy and them were. And I came back outside and then I went back in with the stuff and put it on the pool table and told Murphy this is what I got.

Q. So you arrested him and then brought him in?

A. Right.

Q. And then went back out and searched?

A. Correct.

Q. And did he advise you prior to your arresting him that the car wasn't his?

A. He said it was his aunt and uncle's that live there; that's whose house we were at.

Q. That was Julia and Alan Crall's vehicle?

A. Yes.

Q. And for me to get this straight for the record, there were no narcotics whatsoever found on the actual person? And when I say actual person, I mean his pockets, pants, the clothing of Mr. Thomas on the 28th of February, 1997, correct?

A. I don't believe so.

Q. Okay. What happened after he was placed under arrest? What were your next duties on the scene, sir?

A. Left.

Q. That was it?

A. (Witness nods head.)

Q. You headed on down the road then?

A. To the next one.

MR. RAFOOL: Okay. Detective, I don't have any further questions. But let me read my notes one time to make sure.

[Contained on pp. 19 - 128 of the State Court Record]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA IN AND FOR POLK COUNTY

STATE OF FLORIDA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	CASE NO. CF97-01296A-XX
	)	
ALAN KEITH CRALL,	)	
	)	
Defendant.	)	
	)	
STATE OF FLORIDA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	CASE NO. CF97-01296C-XX
	)	
ROBERT A. THOMAS,	)	
	)	
Defendant.	)	
	)	

HEARING HELD ON JULY 21, 1997

BEFORE THE HONORABLE ROBERT PYLE

I-N-D-E-X

7-21-97

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IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA IN AND FOR POLK COUNTY

STATE OF FLORIDA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	CASE NO. CF97-01296A-XX
	)	
ALAN KEITH CRALL,	)	
	)	
Defendant.	)	
	)	
STATE OF FLORIDA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	CASE NO. CF97-01296C-XX
	)	
ROBERT A. THOMAS,	)	
	)	
Defendant.	)	
	)	

Hearing in the above-styled cause was held on July 21, 1997, at 2:30 p.m., in Courtroom 8-B, Polk County Courthouse, Bartow, Polk County, Florida, before the Honorable Robert Pyle, Judge of the above-styled court.

Appearances were: Hardy 0. Pickard, Esquire, Assistant State Attorney, for the State; Brandon Rafool, Esquire, for the Defendants; the Defendants; the clerk; and the court reporter.

Thereupon, the following proceedings were had and taken:

THE COURT: Are we ready to proceed, gentlemen?

Are we arguing the Thomas and Crall cases combined, or one at a time?

MR. PICKARD: Judge, I would like to argue the Crall case first, separately, because we have a little bit different facts and different law --

THE COURT: Very well.

MR. RAFOOL: - then do Mr. Thomas' case.

THE COURT: All right, sir. Whenever you're ready then, Counselor, let us proceed.

MR. PICKARD: Judge, I would call J.D. Maney.

THE COURT: Very well.

MR. RAFOOL: Judge, again, I'm going to invoke the rule, and ask the other officer to step outside.

THE COURT: All right. Gentlemen -- are there any other witnesses other than these two officers?

MR. RAFOOL: Mine have already stepped out, Your Honor.

THE COURT: All right. Are you familiar with the rule, Officer, or do you want me to explain it?

All right. Hardy, you may proceed.

MR. PICKARD: Thank you, sir.

J.D. MANEY

having been produced as a witness on behalf of the state and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PICKARD:

Q. Tell us your name, please, sir, and spell your last name.

A. J.D. Maney, M-A-N-E-Y.

Q. Your occupation?

A. Detective with the Polk County Sheriff's Office.

Q. What section or unit are you involved with?

A. Narcotics, Canine.

Q. How long have you been in the Narcotics Unit?

A. The last time, seven years. This time, I went back last October.

Q. Let me be sure I get the date right.

On the 28th of February of this year, did you have contact with an Alan Crall?

A. Yes.

Q. At what location?

A. It was on Meadow Avenue off of Hardin Combee in Lakeland.

Q. Who lived there? Whose residence was that?

A. Alan and Julia Crall's.

Q. Okay. Were you there in your capacity as a deputy sheriff?

A. Yes.

Q. Were any other deputies there with you?

A. At the end, there was one, two, three -- four or five more.

Q. When you arrived there initially, were you by yourself or with someone else?

A. I was with my partner, Detective Macek.

Q. Okay. That's the officer that just left the courtroom?

A. Correct.

Q. Okay. About what time of the day or night did you arrive at the Crall residence?

A. It wasn't late. It was after dark, but it wasn't late. It was before 10:00.

Sometime after the sun set, but before 10:00?

A. Yes.

Q. What was the reason for your going there?

A. Me and my partner are the ones that assist all the other units for arrests and things like that. The Narcotics Unit wanted us to go with them, said they had information where some narcotics might be.

Q. You were not specifically in the Narcotics unit at that time?

A. Correct.

Q. Okay. But members of that unit had given you some information?

A. Correct. We're in the Tactical Drug Unit, they call it now, I believe.

Q. What information had you been given that caused you to go to the Crall home?

A. They said that they had information that marijuana was being sold out of it.

Q. Is that essentially all the information you were given at that time?

A. Yes.

Q. What were you requested to do when you got to the Crall home?

A. Knock on the door and talk to the owners of the residence, try to get consent to search.

Q. You were not going there initially to make an arrest?

A. No.

Q. So you and your partner -- or did you and your partner then go to that particular home?

A. Yes.

Q. Were you in uniform?

A. Yes.

Q. Okay. You all in the same vehicle?

A. At that time, yes.

Q. Okay. So you – I assume, you got out of the car, and what did you do?

A. Went up to the door and knocked.

Q. This is the front door?

A. Correct.

Q. Okay. Did someone answer the knock?

A. Julia did.

Q. That's Mr. Crall's wife?

A. Correct.

Q. Was Alan Crall at home at that time?

A. No.

Q. Was anyone there besides his wife?

A. There was a lady sitting on the couch, but I didn't get her name.

Q. All right. So there were two females there when you got there?

A. Yes.

Okay. When Mrs. Crall opened the door, tell us what conversation you had with her.

A. I asked if she owned the house, and she said yes. I introduced myself, Detective Maney with the Sheriff's office, and my partner, Detective Macek; could we come in and talk to her for a minute.

Q. At that point, did you tell her why you were there?

A. No.

Q. You simply asked if you could come in and talk?

A. Correct.

Q. What response did she give you?

A. She said, sure.

Q. So what did you do?

A. We walked in and shut the door. And she sat down in a chair that was to the left of the front door.

Q. All right. You and Detective Macek both entered the house?

A. Yes.

Q. What room are you now in?

A. At the front door. We still stood by the front door to the living room.

Q. With the front door closed behind you?

A. I think ----

Q. If you recall.

A. I think Macek closed it.

Q. Okay. What occurred at this point? You said Ms. Crall sat down; correct?

A. Yes.

Q. What is next said by you or Macek?

A. I told her that we had received information that marijuana was being sold out of the house, and she said it wasn't. She didn't smoke it. Had no idea what I was talking about.

Q. What is said after that?

A. I asked her if she minded if we walked through the house and looked. And the lady that was sitting on the couch was shaking her head no. She said, you don't have to let them do that. And Julia said that she would rather not, because her husband wasn't there.

Q. So she said that she would rather you all not look through the house.

A. Correct.

Q. What do you do at that point?

A. Detective Macek had -- laying by the front door is what appears to be stems of cannabis. It looked like it to him. it looked like it to me. And I told him to test it so he walked out to the car and tested it.

Q. This was something that was laying on the floor?

A. On the carpet by the front door.

Q. Inside the house or outside of the house?

A. Inside.

Q. Sir?

A. Inside.

Q. Inside?

A. Yes.

Q. Did you see what it was that Detective Macek picked up?

A. Yes.

Q. What did it look like to you?

A. It appeared to me, as I've seen it before, the stem of cannabis.

Q. Okay. And you told Detective Macek to do what?

A. To take it to the car and test it.

Q. With a testing kit you all had?

A. Yes, sir.

Q. Did Detective Macek do that?

A. Yes, sir, he did. He came back in, and said it was positive for marijuana.

Q. During the time that Detective Macek -- or let me back up.

How were you able to see this alleged marijuana stem on the floor?

A. There's a light right there.

Q. Okay.

A. I believe it's -- if you come in the door and shut the door and turn around -- I can't remember if there was a light to

the left of the door or to the right of the door, but there was a light -- there was a light somewhere over there.

Q. You could see it just by looking?

A. No. I saw him bent down, and I saw him pick it up.

Okay. So he saw it first?

A. Correct.

Q. Okay. In other words, you didn't have to open drawers or do anything like that in order to see this particular object?

A. No, sir.

Q. It was right on the floor?

A. I didn't notice it until I saw him bending down and I saw him reaching for it. He picked it up and showed it to me, and it looked like it to me.

Q. Okay. Where were you -- or what were you doing while Detective Macek was outside, testing this particular object?

A. I believe I had asked Julia if she had some identification, and I got that from her.

Q. Okay. Then what happened?

A. The test is quick. He came back and said it was positive for cannabis. So then I took Julia out to my car.

Q. What do you mean, you took her out to your car? How did you get her outside?

A. I told her she needed to walk out to my car. I mean, we had found narcotics now. It's her house; she's a suspect.

Q. Okay. Did you basically direct her or tell her, come with me?

A. Pretty much, yes.

Q. Okay. It wasn't, will you please come with me if you want to; it was more of an order than a request? Would

that be correct?

A. I said, you need to come out to my car.

Q. Okay. Did she?

A. Yes.

Q. What occurred when you got her out to car?

A. I had told her, I said, you know, I said, we have information that marijuana is being sold.

And she said that she didn't know about it

But then we find marijuana laying right by her front door.

And she said, well, what can you do now?

And I said, well, we can write up a search warrant and see if the judge will sign it.

Q. What did you say?

A. That's what I told her.

Q. Okay.

A. She said, what can you do now?

Q. So you told her we can get a search warrant?

A. I said, we could write up a search warrant and see if the judge will sign it.

Q. Okay. What is said after that?

A. She said, well, you can go ahead and look.

Q. What did you do then?

A. We went back inside. And I had her sit -- or she walked with us. I had her walk with us. I walked around and looked. And if you go to the right from the living room and back to the right again, there's a room that she said was her office. There was pieces of cannabis scattered all over the floor.

Q. How were you able to see it?

A. You could see it on the floor.

Q. Just by walking?

A. Yes.

Q. Okay. Do you have enough experience in narcotics work that you recognized that's what it was?

A. Yes.

Q. All right. What else did you find, if anything?

A. At that time, we -- I had called the Narcotics Unit, they would handle the case. And they come in. And Julia was still with us. And I kept looking -- I wasn't taking out drawers and scattering everything. I was just -- I may pop a drawer and look, and shut it. Open a closet, look, and shut it. Stuff like that.

Q. Did you find any other narcotics in the house?

A. Went into the bedroom, which she said was her bedroom, and as soon as I opened the door, I could smell it strong. And there was a dresser to the left of the door, I opened the top drawer, and there was some money in it.

To the right of the dresser is a closet. When I opened the closet door, it got even stronger. And there was a large trash bag there. When I opened up the bag, I seen bags of marijuana inside.

As I opened the bag, she said, can you do that?

Q. What did you say?

A. Yes.

Q. Okay. So you found the narcotics in the closet?

A. Correct.

Q. Okay. At what point did her husband come home?

A. Narcotics detectives were there, it was their case. And I vaguely remember that he had called or Julia had called him, and he said he was coming home. And he drove up and parked on the -- there's a field across the church -- or across the street from them. I believe it has a church there. He parked there, and walked up to the house.

Q. Was this after you had found the marijuana in the bedroom?

A. Yes.

Q. Okay. How long are we talking about until he showed up?

A. I would say within thirty minutes after.

Q. Okay. Why was he charged?

A. I don't know. I had nothing more to do with it. The investigation was now the Narcotics Unit's.

Q. Okay.

A. They talked to Mr. Crall and everything.

Q. So as far as interviewing Mr. Crall and ultimately deciding who was going to be charged and who was not going to be charged, that was up to the narcotics detectives --

A. Correct.

Q. -- at the scene?

A. Correct.

Q. Your involvement basically ended when you found the marijuana in the closet?

A. Correct.

Q. Okay. When you searched the house, were you searching it on the theory that you had been given consent to search by Mrs. Crall?

A. Yeah. She told us, you can go ahead and look.

Q. Okay. Had you told her that if she did not consent, you would get a search warrant?

A. No. When she asked me, she said, what can you do now?

And we've done this. We've found narcotics before, and they wouldn't give consent. And the Narcotics Unit would write up a search warrant and see if the judge would sign it. And I told her that. I said, they will write up a search warrant and see if a judge would sign it.

Q. Right.

A. She asked me what we was going to do, and I told her.

Q. And you told her?

A Yes.

Q. And at that point, when you said we will get a search warrant, did you think there was probable cause for a search warrant?

A. We've got them before like that, yes.

Q. Based on what was found inside by Detective Macek?

A. Yes. Yes. I've had them exactly like that and got search warrants. But I did not tell her we were going to. I said we would write up ----

Q. You were trying to answer her question.

A. Correct.

Q. All right. And after you said, we will get a search warrant, that's when she said, what, okay, you can search?

A. You can go ahead and look.

Q. Okay. And that's when you went in and searched?

A. Correct.

Q. You said she went with you?

A. Yes.

Q. Okay. During the time that she was going with you, once you re-entered the house and began your search, did she, being Ms. Crall, at any time ever say, no, I'm not sure I want you to do this, why don't you stop, let's not go ahead with this search?

A. No, sir, she did not.

MR. PICKARD: Okay. That's all, Your Honor.

MR. RAFOOL: Permission to cross-examine, Your Honor.

CROSS-EXAMINATION

BY MR. RAFOOL:

Q. Detective Maney, as you know, my name is Brandon Rafool. And you and I did a deposition in this case; do you recall?

A. I believe.

Q. Okay. Now, when you went to this house on February 28th of 1997, at approximately 9:30 to 10:00 p.m. in the evening, you did not have a search warrant, did you?

A. No.

Q. And the information you received was not personally related to you by a reliable informant, was it?

A. No.

Q. It wasn't even related to you by an anonymous informant?

A. By the Narcotics Unit.

Q. Okay. It was another narcotics officer that related the information to you?

A. Yes.

Q. And do you know whether or not this narcotics

officer has used this source in the past?

A. I have no idea where they got the information from.

Q. Okay. And wasn't it true that that same evening, you had previously went down to the road to search a man's tan Lincoln because you had received information that he would be picking up some pounds of marijuana?

A. Are you referring to Tanglewood?

Q. Yes, sir.

A. Yes.

Q. How long before the search at Meadow Avenue did you conduct a knock-and-talk search at Tanglewood?

A. I don't know. You didn't -- I have it on that subpoena -- I don't have that report here.

Q. And you have no independent recollection?

A. I would have to get the report and tell you the exact time we were on Tanglewood.

Q. Okay. Do you recall? Was it an hour before?

A. I have no idea.

Q. A day before?

A. It was that evening.

Q. That evening?

A. Correct.

Q. Dark time; correct?

A. I believe so, yes.

Q. Okay. And you would agree with me in February, it's getting dark approximately 7:00 in the evening?

A. No idea.

Q. Okay. So you get this information about there being pounds of marijuana at the Tanglewood, but when you stop this tan Lincoln, you find nowhere close to several pounds of marijuana; correct?

A. I didn't stop the tan Lincoln.

Q. Did you search the tan Lincoln?

A. On Tanglewood, yes.

Q. And did you find pounds of marijuana?

A. No.

Q. So the information you received about Tanglewood is obviously incorrect?

A. Where do you get the idea that I had received that he had pounds of marijuana?

Q. Are you saying you did not receive that information that evening?

A. Pounds of marijuana?

Q. A pound of marijuana.

A. It was a pound.

Q. Okay. You did receive information that evening that this man on Tanglewood would have a pound of marijuana?

A. From the Narcotics Unit.

Q. Okay. And you found out that that information was incorrect?

A. He could have got rid of it by the time we got there.

Q. But you would agree with me that there was nowhere close to a pound of marijuana when you did a search of it?

A. What we found, no.

Q. Okay. So then who requested you -- what officer requested you to go to Meadow Avenue?

A. It might have been Detective Murphy.

Q. Okay. And did he specifically tell you to do a knock-and-talk there?

A. Yes.

Q. What is a knock-and-talk, sir?

A. Knock on the door, talk to the owner, try and get consent to search.

Q. Okay. The whole purpose of doing a knock-and-talk is to try to get consent; correct?

A. Correct.

Q. And you will agree with me that you did not have enough probable cause to get a search warrant?

A. Which place?

Q. Meadow Avenue.

A. After when?

Q. After you received the direction from your supervisor to go there and do a knock-and-talk search.

A. At that time, no.

Q. Okay. How long have you been with the SIS now, this term -- this tour of duty?

A. This time?

Q. Yes, sir.

A. Last October.

Q. Okay. How many search warrants have you participated in since you were there in October of '96, to today's date?

A. I have no idea.

Q. Less than ----

A. A lot.

Q. Less than ten?

A. No, more than ten.

Q. Say ten to twenty?

A. Twenty to thirty.

Q. Okay. Twenty to thirty search warrants.

A. Rough guess.

Q. That's fine. Now, since October of '96, how many knock-and-talks have you done on an average week?

A. Since I went out there this time?

Q. Yes, sir.

A. Fifteen.

Q. Fifteen a week?

A. Easy. If we're working.

Q. If you're working?

A. Yeah.

Q. So when you're working, you would do approximately sixty a month of these knock-and-talks?

A. No. If we're working, a lot of times, we are assisting

other units.

Q. Okay. How many -- on an average each month, how many would you say you've done?

A. I have no idea. I don't count them.

Q. Do you recall telling me in a deposition that you did approximately five to ten a week?

A. Might have.

Q. So you would agree with me, then, if I made a statement that the amount of knock-and-talks you're doing to find narcotics greatly surpasses any search warrants you're applying for and/or helping execute since your tour in October of '96?

A. Correct.

Q. In fact, it's pretty much, what, 99 percent of your house search cases are being made on them?

A. Correct.

Q. And you knew when you went up to 1003 Meadow Avenue, that you were going to do a knock-and-talk to get consent to search for narcotics?

A. Correct.

Q. And you were, in fact, told to do that by your supervisor?

A. No, the supervisor wasn't there.

Q. Were you told prior to do that? It's my understanding from your testimony that your supervisor told you to go down to that residence to do a knock-and-talk to get consent.

A. There was no supervisor there.

Q. Who told you to do that?

A. Another narcotics officer. I believe it was Murphy.

Q. Okay. So one of your fellow narcotics officers asked you --

A. Correct.

Q. -- to do the knock-and-talk?

A. Correct.

Q. So before you pulled into that driveway, that was your intent and purpose; correct?

A. Correct.

Q. Now, when you pulled into the driveway, you had Macek with you?

A. Yeah.

Q. Detective Macek?

A. Yes.

Q. Did you have your narcotics dog?

A. I believe in my depo I said yes, but I don't believe I did.

Q. Were you wearing the outfit you're wearing in here today --

A. Yes.

Q. -- which is a Sheriff's Office uniform with your name across it, a star on the front, and "Sheriff" on the back?

A. Yes.

Q. And in your patrol cruiser or your patrol car or undercover car, whatever it is, you carry around with you consent-to-search forms; correct?

A. I may have one or two.

Q. And in February of 1997, you did, in fact, have one or two?

A. Might have.

Q. Did you have a tape recorder with you in the vehicle on February, 1997?

A. In the vehicle?

Q. Yes.

A. Three of them.

Q. And you, specifically on February 28th, 1997, had three tape recorders in your car; correct?

A. Two tape recorders and a wireless system.

Q. Okay. And you didn't tape record any of the conversations you had with Ms. Crall inside the residence or outside the residence?

A. No.

Q. So this court and I have no way of knowing what actually was said by her or by you when you purportedly got her consent to search her residence?

A. I have told you what was said.

Q. Okay. But other than your testimony?

A. Correct.

Q. And it's also correct that Detective Macek was not with you outside the residence when she purportedly gave consent to search?

A. Correct.

Q. Let's talk about your knocking on the door. You've testified earlier that you knocked on the door; correct?

A. Correct.

Q. You don't say anything when you knock on that door, do you?

A. No.

Q. In fact, you don't say anything or identify yourself by

a name until the door is opened?

A. Correct.

Q. And verbatim, you tell the lady that opens the door, I'm Detective Maney, this is Detective Macek, can we come in and talk to you a minute about something?

A. Basically, yes.

Q. Okay. You didn't tell her that you were Narcotics Officer Maney, did you?

A. No, I didn't.

Q. And you didn't tell her that this is Narcotics Officer Macek, did you?

A. No.

Q. And you didn't tell her that your narcotics officer buddy asked you to gain consent to search her residence, did you?

A. No.

Q. And you didn't tell her that you believed there were narcotics inside the residence, did you?

A. At the time, no.

Q. Okay. So you just told her you wanted to talk about something?

A. Correct.

Q. For all she knew, it could have been her husband in an accident, and you were just following up on it?

A. If you say so.

Q. Do you agree with me then?

A. I have no idea what she's thinking.

Q. You have no idea what she's thinking; correct?

A. Correct.

Q. And you didn't try to give her a purpose at the door for you being there, other than to say you wanted to come in and talk about something?

A. Correct.

Q. You walked inside, knowing that you want to search this residence for marijuana?

A. Correct.

Q. You and Macek are inside. He takes out -- does he take out his flashlight?

A. He might have had it out.

Q. And he has got his flashlight out, looking around the ground for any type of evidence, isn't he?

A. That might be the light I saw.

Q. Okay. And this is all prior to her ever saying, go

ahead and look, isn't it?

A. Correct.

Q. And, in fact, when you asked her and you stated your purpose once past the threshold, that you were here to search for narcotics, she said, no, not until my husband -- no, because my husband is not here.

A. Correct.

Q. She just denied you consent; correct?

A. Correct.

Q. And you stayed in her residence, didn't you?

A. Macek had found the marijuana by then.

Q. Macek found the marijuana before she said, no, you cannot look?

A. During that time, because I turned around when I saw him moving, he bent down and picked it up.

Q. Well, did you -- did she tell you, no, you can't do a search prior to you turning around?

A. I don't recall.

Q. Okay. You don't recall.

But you do agree with me that she told you, no, you cannot look?

A. Correct.

Q. And you do agree with me that a person's home is their castle for Fourth Amendment purposes?

A. Correct.

Q. And you're well versed in federal case law and state case law, sir?

A. Correct.

Q. But yet you insisted and you did stay in her residence after she told you no?

A. She didn't tell us to leave.

Q. But she didn't tell you to stay, did she?

A. We weren't there that long.

Q. But she didn't tell you to stay, did she?

A. No.

Q. Now, Detective Macek takes this marijuana stem outside; correct?

A. Correct.

Q. What time elapsed from the time he picked this marijuana stem up and took it outside, and then came back inside?

A. It was quick.

Q. Four minutes?

A. Less.

Q. Two?

A. Less, probably.

Q. You're telling me it took less than two minutes for him to pick up marijuana, walk outside, open the trunk of the vehicle, put it in a Valtox test, shake the thing around, and bring it back inside and tell you it was positive.

A. Probably, yes.

Q. Was it more than a minute?

A. Maybe. I didn't time it.

Q. What were you doing for this minute to two minutes that you were inside her residence?

A. Waiting to see if it was positive.

Q. But you didn't leave, did you?

A. No.

Q. Didn't wait outside?

A. No.

Q. Was she free to leave?

A. Yes.

Q. When the -- when I asked you if she was free to leave, you said yes. That's your testimony here today?

A. At that time, yes.

Q. Okay. Let me ask you one question. It's her house, where is she going to leave to?

MR. PICKARD: Objection. That's argumentative.

THE COURT: Sustained.

Q. (By Mr. Rafool) Now, when -- when Macek brings back in the marijuana stems, do you place Ms. Crall under arrest?

A. She wasn't free to leave at that time, but I don't know if I handcuffed her yet.

Q. Okay. When did you handcuff her?

A. I can't remember if I did out at the car or not.

Q. Okay. And you'll agree with me that by the time -- but during the time that you took her outside, she still hadn't consented to search this residence?

A. She had not.

Q. She had not?

A. Correct.

Q. And you testified earlier that the consent was when you were by your patrol car?

A. At the trunk.

Q. And this is the same patrol car that in the trunk you carry consent-to-search forms?

A. If I have some.

Q. Okay. Macek will know what's in your trunk, won't he?

A. Probably not. He knows where the tests are, and the affidavits

Q. Okay. But you didn't, by the trunk, take out a consent-to-search form and have her review and sign it, did you?

A. No, I took out an affidavit.

Q. What kind of affidavit?

A. An arrest affidavit.

Q. Okay. So she was under arrest? Yes?

A. I started the affidavit and called the Narcotics Unit in, and it's up to them.

Q. Was she under arrest when she was by your trunk?

A. She wasn't free to leave.

Q. And you didn't read her Miranda then, did you?

A. No, I didn't.

Q. You didn't tell her she had a right to an attorney, did you?

A. No, I didn't.

Q. You didn't tell her that she had a right not to allow you to search the residence, did you?

A. No, I didn't.

Q. And it is very clear that she didn't understand what was going on when she was by the rear of that trunk; correct?

A. I explained it the best I can when she asked.

Q. Okay. But she still followed up that question, what can we do now?

A. Correct.

Q. And you're an officer, and you testified earlier that you have knowledge of federal case law and state case law regarding consent and searches and seizures?

A. I went through schools about it, yes, sir.

Q. And there's a high probability that you had a consent-to-search form in back of that trunk, didn't you?

A. I never used one.

Q. But you didn't take one out and let her look at it, to give her a full-blown explanation of what her rights were on February 28th, 1997?

A. Nothing says I have to.

Q. Okay. But you, as an officer, don't feel you have to, do you?

A. We've had lawyers that told us there's nothing required they have to sign a consent-to-search.

Q. You've had lawyers tell you that?

A. The interdiction school in Tampa.

Q. Okay. And your specific words to her outside were: We can write up a search warrant to see if a judge will sign it?

A. Correct.

Q. And you were wearing your badge with your Sheriff's Department insignia on the back, with your gun on your side, next to your patrol car; correct?

A. Correct.

Q. And she was very intimidated, wasn't she?

A. I have no idea.

Q. Did she act like she knew what was going on?

A. I have no idea.

Q. Okay. Now, Detective Macek was inside the entire time; correct?

A. At the front door, yes.

Q. And how long were you by the back of your vehicle?

A. A couple of minutes.

Q. And Macek wasn't outside when Ms. Crall allegedly said to you, you can go ahead and look, was he?

A. No.

Q. He could have been, couldn't he?

A. Why?

Q. To report what she said about whether or not she gave consent.

A. We found marijuana by the front door. I had him stand by the front door.

Q. But you didn't have any -- you didn't tape record the purported consent or have anybody verify it other than yourself?

A. Correct.

Q. Now, when you go inside, you walk through the front door, wasn't Ms. Crall just kind of just hanging her head down, looking down?

A. I have no idea.

Q. And she was handcuffed, correct, when you took her back in the residence?

A. She might have been.

Q. Okay. And let me back up a minute. I forgot one point.

When you were in the residence, there was a female on the couch that told her and told you that this wasn't right, that she didn't have to give -- allow you to search?

A. Correct.

Q. But you took Ms. Crall outside to get the consent, didn't you?

A. Hoping she would give us consent, yes.

Q. You were hoping she would give -- would give you consent?

A. It didn't matter if she didn't. We would have wrote up a search warrant and tried to get a judge to sign it.

Q. You took her outside, hoping she would give her consent, away from her friend that could help her make this decision; isn't that true?

A. I was hoping she would say yes. Yeah, that is correct.

Q. Okay. Now, you go back inside, and you find marijuana where?

A. In the room that she says is her office, the bedroom.

Q. When you were inside, you testified earlier, when Mr. Pickard asked you the question, that you did not -- that she never told you not to look in anything inside the house. I mean

certain areas inside the house.

A. One of the things she said when I started opening the bag, she said, can you do that?

Q. And what did you tell her?

A. I said, yes, I can.

Q. You made a legal -- you made a conclusion that you could open a closed bag that was in a closed closet?

A. She said we could look.

Q. She said you could look when you were out by the car?

A. Correct.

Q. But then when you go inside the room, there's a closet that's closed; correct?

A. Correct.

Q. And you opened that closet without her permission?

A. Correct.

Q. And you then take out a bag. What kind of bag?

A. Trash bag.

Q. Black trash bag?

A. Take it out, it's there.

Q. Black trash bag?

A. I believe it was black, yes.

Q. Not able to see through it; correct?

A. Correct.

Q. And you untie the knot holding it, or is there a twist tie?

A. No.

Q. Just -- how is it secured?

A. Just laying there.

Q. And you take that out of the closet. And she asks you, can you do that?

A. I didn't take it out. I opened it up and looked in it.

Q. And she asked you, can you do that?

A. Yes.

Q. And you say, yes?

A. She's asking as I'm opening it. I see the marijuana.

Q. But you didn't stop opening it and explain to her that you had a ----

A. No, I did not.

Q. And you didn't tell her that she had a right to tell you, no, you can't open that bag?

A. Correct.

Q. And that's the marijuana that you collected that my client is being charged with?

A. I didn't collect it.

Q. Who collected it?

A. I believe it was Detective Murphy.

Q. Where was marijuana found that afternoon -- in the evening?

A. In the room that she said was her office.

Q. Did you place her under arrest, or did another detective?

A. I might have at the car. I believe -- I can't say for sure.

Q. Did Alan Crall ever give you consent to search his residence?

A. I never talked to him.

Q. And in your opinion, the basis for your search in this case and seizure of the marijuana was her consent?

A. Correct.

MR. RAFOOL: Nothing further.

REDIRECT EXAMINATION

BY MR. PICKARD:

Q. Detective Maney, when you took Mrs. Crall out to your car and you told her that you could get a search warrant when she asked you what happens next, if she had not given you consent and said you can't go back in, what would you have done?

A. Since it was her house, she was the owner, and we had found narcotics, I would have kept her with me. She wouldn't have been free to leave. And the Narcotics Unit would have wrote up a search warrant to try to get a judge to sign it.

Q. And I think you said before, you have encountered situations like this before?

A. Exactly like this.

Q. And search warrants have been obtained?

A. Yes.

Q. All right. So was it your feeling that regardless of whether she had given you consent ----

MR. RAFOOL: Judge, I'm going to object. I think this has been asked and answered through the direct and cross, and I don't see ----

THE COURT: Overruled.

Q. (By Mr. Pickard) That regardless of whether she gave consent, by the finding of that marijuana in the living room,

that house was going to be searched eventually, whether by consent or whether by search warrant later on.

A. If she had denied it or said no, then it would have been up to the supervisor and he probably would have had a search warrant wrote up.

Q. Okay. And the marijuana in the closet would have been found pursuant to the search warrant?

A. Correct.

MR. PICKARD: That's all.

THE COURT: Thank you, sir.

(Witness excused.)

THE COURT: Next witness.

MR. PICKARD: Detective Macek.

JAMES MACEK

having been produced as a witness on behalf of the state and having been first duly sworn, testified as follows:

THE COURT: You may proceed, Counselor.

DIRECT EXAMINATION

BY MR. PICKARD:

Q. Tell us your name, please, sir, and spell your last name.

A. Detective James Macek, M-A-C-E-K.

Q. Your occupation?

A. Detective with the Polk County Sheriff's Office, assigned to the Tactical Drug Unit.

Q. How long have you been with that unit?

A. Since February of this year.

Q. On February 28th of this year, did you go to the home of Mr. and Mrs. Crall?

A. Yes, I did.

Q. Where is that?

A. It is located at 1003 Meadow Avenue, in Lakeland, Florida.

Q. Who did you go there with?

A. Detective Maney.

Q. And what was the purpose of you and Detective Maney going there?

A. Making contact with the occupants of the residence in regards to possible marijuana being dealt out of their residence.

Q. Okay. Where had you received that information?

A. Detective Maney had received the information.

Q. From who, if you know?

A. One of our narcotics detectives.

Q. What was your game plan, so to speak, when you got to the house? What were you going to do?

A. Knock on the door and make contact with the people inside, and speak to them about the information we had received, and ask them if we could take a look around, make sure whether there was or wasn't any illegal narcotics in the residence.

Q. Was it your intent or hope to get consent to search?

A. Yes.

Q. Okay. Tell us what happened when you and Detective Maney arrived at the residence?

A. We arrived at the residence, we both went up to the front door.

Detective Maney knocked on the front door.

A white female, Mrs. Crall, answered the door.

Detective Maney asked if we could come in, and talk to her.

She said, sure.

We walked inside.

Detective Maney started explaining to her why we were

there.

While he was doing that, I looked down at my feet, and I observed a couple of pieces of cannabis stem.

Q. How did you know that's what it was?

A. I didn't know exactly at first. It looked familiar to the same as normal cannabis stubs I've seen in the past. I picked them up and showed them to Detective Maney, at which time he asked me to go conduct a field test on the stem.

Q. How were you able to see this particular object?

A. I looked down and saw it. And then I used my flashlight, and I shined my flashlight down. And, you know, that's when I observed it clearly.

Q. What room of the house were you in?

A. I was right in the doorway. The door was right behind me. It was the living room area. We walked in, and I was standing right there by the door.

Q. So it was laying on the floor inside the front door?

A. Correct.

Q. Was the front door open or shut, or do you recall?

A. I don't recall.

Q. Okay. Was it dark in that room?

A. It was dimly lit.

Q. All right. How long have you worked in the Narcotics Unit as of that time?

A. Twenty-five days. I started in February 3rd, I believe it was.

Q. How long have you been with the Sheriff's Office?

A. About two years, nine months.

Q. Okay. Had you run into marijuana before?

A. Yes, I have.

Q. Okay. Is that what you thought this was when you picked it up?

A. Yes.

Q. But you showed it to Detective Maney for confirmation?

A. Correct.

Q. You say you were then instructed by him to go run a test?

A. Correct.

Q. What did you do?

A. I went out to the vehicle, and conducted a presumptive test, field test, with the marijuana test kit, at which time, it showed positive for cannabis.

I then went inside, showed Detective Maney the test kit,

and advised him it had tested positive.

Q. How long would you say that took?

A. The test itself? About a minute, minute and a half.

Q. Okay. Was Detective Maney still inside when you had returned?

A. Yes. Yes.

Q. Okay. What occurred after you told Detective Maney it was positive?

A. Detective Maney then asked Ms. Crall to step out with him, outside. I remained inside. There were several other people inside the residence. I stayed at the door.

Q. Who else was inside?

A. There was a white female, and I believe the children of the Cralls or a child.

Q. Okay. Were you communicating or conversing with them while you were inside?

A. No.

Q. You were just standing there?

A. Correct.

Q. So you did not hear the conversation outside between Mrs. Crall and Detective Maney?

A. No, I did not.

Q. What's the next thing that occurred after Detective Maney left the house with Mrs. Crall?

A. He then, again, reentered the residence with Ms. Crall. He advised me that he had obtained a consent to search from Ms. Crall, at which time he began to search the residence. I believe he located some more marijuana in the residence, small fragments in another room, office room or something.

Q. How long were they outside, again, if you have any sort of remembrance or recollection?

A. It wasn't too long.

Q. Okay.

A. A couple of minutes, maybe. I honestly don't remember.

Q. Was Mrs. Crall with him when he came back inside?

A. Yeah, they came back in together.

Q. And Detective Maney said he had received a consent to search?

A. Correct.

Q. Okay. Did Ms. Crall speak up and say, no, that's not right, I haven't given consent to search?

A. (Shakes head.)

Q. No?

A. No.

Q. Did you participate in the search with Detective Maney?

A. I searched certain areas. I didn't locate anything further.

Detective Maney, like I said, located a little bit of -- I assume it was residue in an office area. And then later on, he located a large amount in the master bedroom.

Q. Okay. You were not with him when he actually did that?

A. When he actually located it, no, I was not.

MR. PICKARD: Okay. That's all.

MR. RAFOOL: May it please the court.

THE COURT: You may inquire, Counselor.

CROSS-EXAMINATION

BY MR. RAFOOL:

Q. Detective Macek, as you previously remember from a deposition, my name is Brandon Rafool, and I represent Mr. Crall.

A. (Nods head.)

Q. Just for the record, there were no search warrant being served by either you or Detective Maney on this evening of February 28th, 1998?

A. Correct.

Q. And you did not have any arrest warrants that evening, did you?

A. No.

Q. Now, the knock -- is the knock on the door by Detective Maney?

A. Correct.

Q. And he does not say anything when he knocks; correct?

A. No.

Q. He waits until the door opens and just simply says, I'm Detective Maney, this is Detective Macek, can we come inside for a minute and talk to you?

A. Something to that effect, yes.

Q. Okay. But specifically, there's nothing ever said that you are a narcotics officer and he's a narcotics officer, and that you're there to search the residence for narcotics?

A. No.

Q. Okay. So y'all's admittance past the threshold of the door was under the premise that you were going to be just talking to Ms. Crall; correct?

A. Correct.

Q. And you and Maney - excuse me. And you knew, sir, prior to even pulling into the driveway of this residence that a narcotics officer had requested y'all to do a knock-and-talk search?

A. He asked us if we could go do one.

Q. Okay.

A. Make contact with the people there.

Q. And a knock-and-talk search, sir, is intended to gain consent from the occupants of a house so that you can search for narcotics; correct?

A. Correct.

Q. And you knew that prior to February 28th, 1997 at 10:00 p.m., when you approached Mr. and Mrs. Crall's residence?

A. Yeah.

Q. And, in fact, you've been in the SIS division since February 3rd of 1997?

A. Correct.

Q. And, in fact, since you've been in that division

Detective Maney has schooled you on the art of a knock-and-talk search; correct?

A. Pretty much.

Q. And before you were with that division, you never had occasion to do a knock-and-talk, did you?

A. No, not really. I was in Patrol.

Q. And how many years were you in Patrol?

A. Since February -- since October of '94.

Q. Okay. So from October of '94, to February of '97 is approximately two years-plus?

A. Correct.

Q. You never did any knock-and-talks then?

A. No.

Q. You got to the unit with Detective Maney, and he taught you how to do them, didn't he?

A. Correct.

Q. And, in fact, from February 3rd, 1997, until the date you gave me at deposition on May 23rd, 1997, you estimated that you were doing anywhere from 10 to 25 knock-and-talk searches a week?

A. Correct.

Q. And you also estimated that you had not prepared or drew up any search warrants at all?

A. Correct.

Q. So you would agree with me that well over 99 percent of any searches of residences you and Detective Maney do is through what's called a knock-and-talk search?

A. Correct.

Q. And when you entered the residence, was your flashlight already out of its case?

A. I don't have a case for my flashlight. It was in my hand; correct.

Q. It was in your hand, and it was illuminated; correct?

A. No, it was not.

Q. Okay. When did you illuminate your flashlight?

A. When I looked down and saw the -- what I believed to be cannabis on the floor.

Q. And you will agree with me that the cannabis stems that you found inside the residence could not be seen from outside the residence threshold?

A. Correct.

Q. And didn't Mrs. Crall state that she would not allow a search because her husband was not home, when y'all were inside the residence?

A. Yes, she did.

Q. And, in fact, on February 28, 1997, you never heard her consent to any search whatsoever, did you?

A. Correct.

Q. And you were relying on whatever your partner, Detective Maney, said about a consent to search?

A. Correct.

Q. How long did it take for you to test the marijuana and come back inside with it? Approximately two minutes?

A. Within that time, yes.

Q. How long was it between the time you knocked on the door -- excuse me -- the time Detective Maney knocked on the door and when Ms. Crall came back inside, allegedly having given consent to Detective Maney to search?

A. From the moment we first made contact with her, to the moment -- I honestly couldn't tell you.

Q. And you'll agree with me that the patrol car that you and Detective Maney ride in contains consent-to-search forms in the trunk?

A. Yeah. Yes, it does.

Q. Okay. Have you used any of those, ever?

A. No.

Q. And it's not your practice to use those?

A. No.

Q. And you'll agree with me that when Maney was outside with Ms. Crall, he was standing right next to the trunk of the vehicle, which was open, because you had taken the Valtox testing kit out of it?

A. I had taken it out. When he was out there, I don't know where he was standing.

Q. Okay. Was the trunk open when he was outside?

A. No.

Q. Was the Valtox test kit kept in the trunk?

A. Yes.

Q. It would have been very easy for you to grab a consent form, along with that test kit, wouldn't it have been?

A. If I was going to use one.

Q. Did you read Ms. Crall her Miranda rights prior to mister -- or, excuse me -- Detective Maney taking her outside in handcuffs?

A. Did I?

Q. Yes.

A. Not that I recall.

Q. Okay. Did Detective Maney take her outside in handcuffs prior to him getting the consent from her?

A. I don't recall.

Q. When you were inside the house initially, there was a white female on the couch?

A. Yes, there was.

Q. And she advised Ms. Crall and y'all that it's not right, there shouldn't be a search without -- she shouldn't let y'all do a search?

A. She said, it's not right, something to that effect. I don't know exactly what the words were.

Q. Okay. And after that was said, Detective Maney took Ms. Crall outside, away from this female; correct?

A. After I come in with the test kit?

Q. Yes.

A. He had taken her out.

Q. And he didn't let this female -- or you didn't let this white female go outside with Ms. Crall, did you?

A. I didn't tell her she couldn't. I didn't tell her she could.

Q. But she didn't go outside?

A. No, she didn't.

Q. And you weren't privy to any conversations out at the car between Detective Maney and Ms. Crall, were you?

A. No, I was not.

Q. And in the information received prior to y'all's knock-and-talk, nobody ever said that Julia Crall or Alan Crall were the individuals selling narcotics, did they?

A. Not to my knowledge.

Q. Okay. And you took -- now, you took -- you picked up some marijuana stems on the floor?

A. Correct.

Q. And did you ask permission to take those outside?

A. No, I didn't.

Q. You feel you don't need permission; correct?

A. Not at that point.

Q. And you picked them up inside the residence, across the threshold?

A. Correct.

Q. Were you privy to any conversations where Detective Maney talked about writing up a search warrant?

A. No.

Q. Were you inside when Ms. Crall and Detective Maney

went inside the bedroom and observed a partially-closed closet where the marijuana was later found?

A. I was inside, I believe. At the time, I wasn't with them.

Q. So you don't have any information whatsoever regarding what happened between her and Detective Maney outside that closet?

A. No, I couldn't tell you.

MR. RAFOOL: I have no further questions.

Thank you, Detective Macek.

MR. PICKARD: No redirect, Your Honor. And I have no other witnesses.

THE COURT: All right.

(Witness excused.)

MR. RAFOOL: Your Honor, I would like to call ----

THE COURT: Argument?

MR. RAFOOL: I would like to call three witnesses first.

THE COURT: Very well.

MR. RAFOOL: The first would be Julia Crall. She's outside.

JULIA CRALL

Having been produced as a witness on behalf of the defense and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RAFOOL:

Q. Ms. Crall, please state your name for the record.

A. Julia Ethel Crall.

Q. Okay. Do you recall an incident on February 28th, 1997, at approximately 9:30 in the evening, wherein some police officers, detectives from the Sheriff's Department, knocked on your door at 1003 Meadow Avenue?

A. Yes.

Q .Did they say anything when they knocked on the door?

A. No, sir.

THE COURT: Excuse me. You're talking ----

THE WITNESS: I'm sorry.

THE COURT: He's asking the questions. You're talking to me, so please speak so I can hear you.

THE WITNESS: Okay. I'm sorry.

Q. (By Mr. Rafool) Was there anything said when the

knock came to the door?

A. No, sir.

Q. What happened after the knock was at the door? What did you do next?

A. I opened the hard door. Then the two police officers had the storm door open already. And they told me that they -- they had something they needed to talk to me about. And that's whenever he put -- the one -- the front man in the Canine Unit put his foot between my feet, and then came in on me.

Q. Okay. Did you invite them in at the threshold?

A. No, sir.

Q. Did he tell you what purpose he was there, other than I need to talk to you about something?

A. No, sir, not until after he had gotten in and I had sat down.

Q. Okay.

A. I thought that they were there to tell me my husband had gotten in a wreck. He was with his sister in emergency surgery in Haines City.

Q. Have you ever had police officers come to the door of your house before?

A. No, sir.

Q. Okay. Did he tell you he had a search warrant?

A. No, sir.

Q. Did he tell you he had an arrest warrant?

A. No, sir.

Q. So you sit back on the couch. And who is in the room with you?

A. Nicki Thomas and my two children.

Q. What does the officer tell you?

A. After we had -- he had already came in the house, and I was sitting down, he told me that he had someone tell him that they smelled smoke coming from my house. And they wanted to know if I could let them search.

Q. And what did you tell them?

A. I told them, no, that I wanted them to wait until my husband got home.

Q. Okay. And was your husband home?

A. No, sir.

Q. What happened after that?

A. Then they said that they had found a stem on the floor.

Q. Who said that? Which officer?

A. Macek.

Q. Macek?

A. Uh-huh.

Q. And did you tell them, no, you cannot search, prior to Macek saying he found the stem?

A. Yes, sir.

Q. What did Macek do with the stem?

A. He said he took it outside to test it.

Q. Okay. And he brought it back inside?

A. Yes, sir.

Q. Did you give him permission to take anything out of your house?

A. No, sir. There was no ask -- no one asked.

Q. Ma'am, did Macek talk to you after he came back inside, or was it Detective Maney talking to you?

A. Detective Maney.

Q. What did he do -- what did he say to you once Macek came back inside?

A. He shook the vial with orange liquid in it and said that it would check positive, and for me to stand up and turn around, I was under arrest.

Q. Did he place handcuffs on you?

A. No, sir. He asked Macek for a pair, and he said he didn't have any. He used them up at the last place. And that's when Maney asked me to walk outside to get handcuffs.

Q. Okay. Did you feel you were free to leave at that point:?

A. No, sir.

Q. Did he read you your Miranda rights --

A. No, sir.

Q. -- at any time that evening?

A. No, sir.

Q. Did he advise you when you were walking outside or by the car that you had a right to an attorney?

A. No, sir.

Q. Were you ever advised that anything you would say could be used against you in a court at a later date?

A. By Maney, no, sir.

Q. Were you advised by any officers prior to the purported -- the alleged consent to search your residence?

A. An hour and a half after I was handcuffed, Summers read them to me in my son's room.

Q. Okay. Now, were you advised that -- by Maney, that you had a right to refuse to consent in your residence?

A. No, sir.

Q. Did he ever show you any consent-to-search forms?

A. No, sir.

Q. Okay. Do you know whether or not you have to allow officers to search your residence if they come knock on your door?

A. No, sir.

Q. Do you have any ideas about that whatsoever?

A. I'm not clear on my rights on that point.

Q. Okay. And did any of these officers explain it to you?

A. No, sir.

Q. Now, you're outside next to the car with Detective Maney, and he's telling you he's going to arrest you for possession of marijuana?

A. Yes, sir.

Q. And you ask him the question: What can we do now? Correct?

A. I didn't -- I said I didn't know what to do, because I was not clear on my rights.

Q. Okay.

A. And that my husband knows more about what our rights are, and would he please let me call him, and then he could come there and talk to them.

Q. Did he let you call your husband?

A. No, sir.

Q. Was your phone inside the residence working?

A. Yes, sir.

Q. And was your husband in a place he could be reached?

A. Yes, sir.

Q. Did, in fact, somebody reach him that evening and tell him to come home?

A. Yes, sir.

Q. Who reached him?

A. Nicki Thomas.

Q. Was this after they had searched the residence?

A. Yes, sir.

Q. Now, did he explain to you your rights by the police car, about ----

A. No, Sir, he didn't. He told me I had -- he had probable cause, and I had no more rights, and they didn't need my permission to search.

Q. Okay. Did he talk about a search warrant?

A. No, just that he didn't have one.

Q. Okay. Did he talk about going to get one written up and seeing if the judge would sign it?

A. No, sir.

Q. What did you think was going to happen if you did not allow them to search your residence?

A. I don't know. I don't know.

Q. Okay. Did you have any children inside the house?

A. I had two.

Q. Okay. How much time do you think elapsed from the time he knocked on the door and the time that you were being led back inside after being by the police car?

A. Well, about maybe five, five and a half minutes.

Q. Were you scared?

A. Yes, sir.

Q. What type of education have you gone through, ma'am?

A. I graduated from the twelfth grade. And I tried going to college, but I couldn't pass college English, so I failed.

Q. Okay. Have you ever been arrested before?

A. No, sir.

Q. Have you ever had your car searched before?

A. No, sir.

Q. And we know you never had your house searched.

A. No, sir.

Q. Okay. What do you tell Detective Maney when you were out by the police car about him searching?

A. That I wanted him to wait, let me call my husband, and wait for my husband to arrive.

Q. And what does he do then?

A. Then he turned me around and put the handcuffs on me and said -- that's when he said that he had probable cause and I no longer had any choice whether they searched or not, and led me back into the house by my elbow.

Q. All right. Did he say anything when you got in the house?

A. He told me, he said, are you going to show me around, or what?

And then I said, where did you want to look first?

Q. Okay. And then y'all went to the bedroom?

A. That's when he told me he wanted to go to my bedroom, yes, sir.

Q. Okay. Did he come upon a closed closet in your bedroom?

A. Yes, sir.

Q. What happened when he saw that closet was closed?

A. He opened it and looked inside.

Q. Did you question his authority about going in that closet?

A. Yes, sir. I didn't understand it. Anything I saw on television, that they're not supposed to do any -- open anything and search without a search warrant. But that's all -- and I didn't know if that was in real life, because TV don't usually portray ----

Q. Was it a real-life TV drama,or just a movie?

A. Just a movie.

Q. Okay. And he responded to you how?

A. He said, yes, I can.

Q. And he then opened that closet?

A. Yes.

Q. And he found what?

A. He found a black garbage bag.

Q. Okay. That had marijuana in it?

A. Yes, sir.

MR. RAFOOL: I have no further questions, Judge.

I would pass to Mr. Pickard.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. PICKARD:

Q. Ms. Crall, when the police came to your door to begin with, you said they told you they needed to talk to you; correct?

A. Yes, sir. Yes, sir.

Q. All right. Did they ask you if they could come in?

A. No, sir.

Q. You've saying they were in -- they came in the first time against your will?

A. Yes, sir.

Q. You did not want them in your house?

A. No, sir.

Q. Did you tell them, please do not come in, I do not want you in my house?

A. They were -- whenever I was standing at the door, Maney put his foot in between my two feet and stood up, which caused me to go back. And then he followed me - follow it up with more steps, and I was in the house and they were in the house.

Q. So they basically forced their way in against your will?

A. Yes, sir.

Q. Okay. After they got inside, they told you why they were there?

A. Yes, sir.

Q. You said they told you that someone had said they had smelled smoke coming from your house, and they wanted to search your house?

A. Yes, sir.

Q. Did the officers tell you that they had received information that marijuana was being sold from the house?

A. No, sir.

Q. They never mentioned anything to you about any marijuana?

A. No, sir. Just that they smelled funny smoke coming

from my house.

Q. Okay. But the word "marijuana" was not brought up at all?

A. No, sir.

Q. And when they said they wanted to search your house because they felt they smelled funny smoke, you said no?

A. Yes, sir.

Q. All right. Why?

A. Because my husband was not there.

Q. Okay. Did you feel that you did not have the right to say yes or no without your husband being there?

A. I usually make sure that on -- this seemed to be an important decision, and I usually don't make decisions, important decisions, without my husband. I felt that he should be there.

Q. Even though at that time the police had said nothing about drugs or marijuana, all they had something about was smoke, you still felt you did not want them searching your house?

A. They wanted to search for -- after I had been - the stem was found, then they wanted to search with -- for marijuana.

Q. Okay. Let's talk about the stem. Did you see them find the stem?

A. No, sir. I saw him turn on the flashlight. He knelt down. I did not see him pick up anything. I did not see his hand go completely to the floor.

Q. Is it your feeling that they made up this stem being there, that the stem never existed, and they are simply lying about that? Is that your feeling?

A. I believe that they had it with them, yes, sir.

Q. Okay. That they had it and sort of planted it or claimed they found it on your floor, when they really didn't?

A. Yes, sir, because I just got finished cleaning my house.

Q. Okay. And it's your feeling that that stem -- or that there was no marijuana stem there on the floor?

A. Yes, sir.

Q. Okay. You were taken outside. You were placed under arrest. Do you recall asking the officer something along the lines of what do we do now, or what's going to happen next? And he says, well, we can go get a search warrant?

A. No, sir.

Q. Okay. You don't recall any conversation at all outside with Detective Maney where the word "search warrant" was mentioned?

A. The only thing I can remember about them is when they said they didn't have a search warrant.

Q. Okay.

A. And they needed my permission to search.

Q. And you what?

A. They needed -- they wanted my permission to search.

Q. All right. Detective Maney has said that after he told you that they could get a search warrant, you said, okay, you can go ahead and search. Your testimony is that is not true; correct?

A. Yes, sir.

Q. Okay. You never at any time gave them permission to search your house?

A. No, sir.

MR. PICKARD: That's all.

THE COURT: Okay. Redirect?

MR. RAFOOL: One question, Mrs. Crall.

REDIRECT EXAMINATION

BY MR. RAFOOL:

Q. Were you crying when you were outside with Detective Maney?

A. I was very nervous, and I was very scared. I was

very confused.

MR. RAFOOL: Okay. No further questions, Judge.

THE COURT: Thank you, ma'am.

MR. RAFOOL: Judge, we would call Nicki Thomas to the stand. She's outside.

NICKI THOMAS

having been produced as a witness on behalf of the defense and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RAFOOL:

Q. Ms. Thomas, my name is Brandon Rafool. I'm going to be asking you some questions about an incident that happened February 28th, 1997.

Q. What is your name?

A. I'm Nicki Sue Thomas.

THE COURT: Speak a little louder, ma'am.

A. Nicki Sue Thomas.

Q. Okay. Were you present at 1003 Meadow Avenue in Lakeland, Florida, February 28, 1997, at approximately 9:30 to 10:00 in the evening?

A. Yes, I was.

Q. What happened that evening when you were there?

A. There was a knock at the door, and Julia went to the door. And when she opened the door, two police officers were standing there. They had the screen door open, going towards to come in, and they asked her if they could ask her a few questions. By this time, they were in the house. And Julia was standing to their left, and said, I prefer if you would wait until my husband got home.

And at that time, they had already had their flashlight out. The gentleman standing behind the police officer that was in front of him, and had said that he had found something, and that he needed to go outside and find a test tube to test it to find out what it was.

Q. Let's go back to the door. When they were at the door, did Mrs. Crall allow them in the house?

A. No. They had already had the screen door open, coming in, when they -- they had told her their names as they were coming in, and wanting to ask questions.

Q. Okay. Is there a doorbell at the 1003 Meadow house?

A. Yes, there is.

Q. And did it work in February of 1997?

A. It works, but it's -- it's not a real clear bell.

Q. Okay. But the doorbell is outside the screen door; correct?

A. Yes, it was.

Q. So you could ring it without opening the screen door?

A. Yes.

Q. And if somebody would have rang it, you would have heard it, sitting ten feet from the door?

A. Yes, you can hear.

Q. Now, did you advise Ms. Crall that never anything -- that she did not have to allow them to search?

A. Yes, I did.

Q. And what was either officers' response?

A. They -- well, first, they insisted, to want to talk to her. And she -- she said, I prefer that you wait until my husband comes home, and she repeatedly said this several times to them.

Q. Okay. And she told them that: they could not search, she wanted to wait for her husband; correct?

A. Yes, that's correct.

Q. What did they do then after they found the marijuana stems?

A. They took her outside.

Q. Okay.

A. After they told her that she was under arrest.

Q. Okay. And how long were they outside for?

A. Not very long. About a minute, at the most.

Q. Okay. Did you happen to see where they went outside?

A. No, I didn't.

Q. Okay. What happened next?

A. They came back inside. And at that point, Julie said, where do you want to start? And they were already going to the bedroom in the house. Julia was going to go to her office, and they went to her bedroom instead.

Q. Where were you -- let me strike that.

Did they allow you or did you ask to go outside with her?

A. No, they made me sit on the couch.

Q. Did they tell you to sit on the couch?

A. Yes, they did.

Q. And did you ever make any attempt to try and ----

A. I stood up, and they told me I needed to sit back down.

Q. Who said that?

A. I'm not sure, because the police officers -- I'm not familiar with their names.

Q. Okay. Did you see the two officers that came out of the courtroom earlier?

A. Yes, I did.

Q. Do you recall, was it the first officer that came out or the second officer, or if you don't recall ----

A. I don't recall. I got them mixed up.

Q. Now, when Julia came back inside, she was handcuffed?

A. She had her hands behind her back. They weren't actual handcuffs, I don't believe. I don't believe them being handcuffs.

Q. But they were tied together?

A. Yeah, I think straps or -- they weren't handcuffs.

MR. RAFOOL: I don't have any further questions. I pass.

CROSS-EXAMINATION

BY MR. PICKARD:

Q. Ms. Thomas, what relation are you to Ms. Crall, or why were you over at her house that day to begin with?

A. I have been a friend for nine years.

Q. Were you just visiting over there?

A. Yes, I was.

Q. Also, the police -- and we're going to get into that a little later today - arrested a man who drove up to the house named Robert Thomas. Are you related to him?

A. Yes, I am.

Q. What relation are you to him?

A. He is my brother.

Q. Okay. You say when Ms. Crall, back in the house, she said to them, where do you want to start, and that's when they began doing their search?

A. That's correct.

MR. PICKARD: That's all.

THE COURT: Redirect?

MR. RAFOOL: No redirect.

I just would like to call one last witness.

THE COURT: All right, sir.

(Witness excused.)

ALAN KEITH CRALL

having been produced as a witness in his own behalf an having

been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RAFOOL:

Q. Mr. Crall, please state your name for the record.

A. Alan Keith Crall.

Q. Okay. Do you reside at 1003 Meadow Avenue in Lakeland, Florida?

A. I do.

Q. And did you reside there February 28th, 1997?

A. I did.

Q. Did you give officers permission to search your residence that evening?

A. I did not.

MR. RAFOOL: No further questions, Your Honor.

MR. PICKARD: No questions.

THE COURT: Thank you.

Argument, gentlemen?

MR. PICKARD: Do you want me to go first? Do you prefer that?

THE COURT: As you wish, gentlemen.

MR. PICKARD: Judge, first of all, I guess the implication is being made that what the police did in this case, they had no right to do. That is, go up to someone's house, knock on the door, ask them for permission to talk and to consent. In fact, they do have the right to do that. There is no -- there is no lawful -- or there is no legal authority that says you even have to have suspicion to talk to anybody, to walk up to anybody and talk to them and ask them for permission to search. So there is nothing illegal about what the police officers did.

Secondly, you do not have to knock and announce. Knock and announce applies to search warrant situations and arrest situations. It does not apply to situations like this.

When the police found the marijuana on the floor, they had the right at that time to investigate where it came from, who it came from, and the circumstances of it being in the house. Unless, of course, the court wants to accept the testimony of Mrs. Crall, that they forced their way in to begin with, and were not in a position -- because if they were rightfully in the house, they were in a position to see this marijuana stem in plain view, which gave them the right to do a further investigation of the circumstances surrounding whose it was and how it got there. Unless the court wants to accept, as I said, Ms. Crall's testimony that they had no right to be there to begin with because they forced their way in the house against her permission or consent.

There is no requirement that people sign consent-to-search forms. There is no requirement that the police tell people they have a right to refuse to consent to searches. And the case law is -- is clear on that. There are numerous cases an that.

There is nothing that these officers -- in going back and listening to the testimony, I can find nothing in this case that the officers told to this lady that was not the truth. They told

her they wanted to talk to her. Once they got inside, they told her we're here investigating a claim of marijuana being sold from your house. After they went outside, when she asked them, well, what's going to happen next, they said, well, we're going to get a search warrant or we can get a search warrant . That's the truth.

And then she -- if that causes her to say, okay, you can search, that does not make the -- make the consent involuntary, because they have done nothing improper or wrong or lied to her about anything. They were simply answering her question. They said, well, we're going to get a search warrant. And then she says, okay, you can search. That, in and of itself, does not make her consent involuntary or not freely given.

The other point I would bring out is that in this case, once the marijuana was found on the floor -- unless, of course, the court again wants to accept Mrs. Crall's testimony, that she feels the police didn't find it there, and that they had it with them all along or that they planted it -- once that marijuana stem is found on the floor inside the home, they certainly had a right to get a search warrant. It had been done many times in the past, according to Detective Maney. So at that point, even if she had said, no, you cannot go in the house and search the house, they would have simply gone and gotten a search warrant, and this stuff in the closet was going to be found, anyway.

I don't know of any judge in this circuit that, under these facts, is going to say, no, I'm not going to sign a search warrant. if a police officer comes to them and says we were inside the residence, the front door, found a marijuana stem on the floor, the resident will not allow us to consent -- a consent to search - will you put that in a search warrant, that based on their experience, it was marijuana, it tested positive for marijuana, I think any judge in this circuit is going to sign a search warrant.

So this marijuana in the closet was going to be found, one way or the other. Whether it was found pursuant to a consent search or whether it was found pursuant to them getting a search warrant and finding it two hours later when they came back with a search warrant, it was going to be found. I guess what we're talking about here is inevitable discovery, because it was going -- as I said, it was going to be found, anyway. So I think under either of those theories, the motion to suppress the marijuana that was in the closet should be denied.

MR. RAFOOL: May it please the court?

THE COURT: You may, Counselor.

MR. RAFOOL: Judge, I've got a stack of cases that I'll refer to in order.

First, I'll give a stack to Mr. Pickard, then I'll give a stack to you, Your Honor. I'll just briefly highlight them, and you can go back and read them later, Judge.

Mr. Pickard, I guess, is justifying this search on inevitable discovery. But from the testimony that I've gathered, it's seems like it's relied upon by consent. But, Judge, we have four specific problems with the entrance into the house and the seizure and the other drugs listed in the state's response to discovery, which we're seeking to suppress. I'll take them in order.

First, Judge, the police violated the Knock-and-Announce Statute. And I'll have -- I cite to the court Benefield versus State, 160 So.2d 706. It's a Florida Supreme Court decision in 1964. That case, Judge, is a sentinel case on knock and announce. And I want to show the court Page 3 ----

THE COURT: I'm sorry, Counselor. Which case are

you referring to now?

MR. RAFOOL: Benefield versus State, Your Honor. And I want to just basically -- everybody is familiar with the facts of that case; I'm not going to read them into the record.

But on Page 3, Judge, the pertinent facts are, two arresting officers made no announcement of their authority and purpose before entering petitioner's home, and did not tell anybody why they were in the house until they had actually pushed their way through the door. And there's some very nice language about what our Fourth Amendment is. And our Fourth Amendment, Judge, as we all know it, protects us all from unreasonable searches and seizures, especially in our home, which is described by every court in this nation and every court in this -in the United States, as our castle. And a person should have the right to be free from unreasonable searches and seizures in their castle. That's the only place in the United States a person has these strong rights.

And on Page 4, Judge, I cite Paragraph 8. I cite from the Benefield case that they state: Entering one's home without legal authority and neglect to give the occupants notice have been condemned by the law and the common custom of this country and England from time immemorial. William Pitt has categorized a man's home as his castle.

At the top of Page 4, the right-hand column, it's cited: The law forbids the law enforcement officers of the state or the United States to enter before knocking at the door, giving his name and the purpose of his call. There's nothing more terrifying to the occupants than to be suddenly confronted in the privacy of their own home by a police officer decorated with guns and the insignia of his office. This is why the law protects the interest so rigorously.

Judge, these officers testified they were only there to search for narcotics. They were sent there by their fellow officers to search for narcotics. Badges, guns, sheriff's

department logo, sheriff's department vehicle. They did not tell Ms. Crall this through the screen door, which they could have. They did not tell this to her at the threshold, which they could have. They pushed their way in, by Mrs. Crall's testimony. Or if you would choose to go with the officers' testimony, they still were inside prior to them telling their purpose.

And I take argument, and I would like the court to agree with me, that the state saying that knock and announce only applies to arrest warrants, is basically saying the Fourth Amendment only applies when you go in to arrest somebody. The Fourth Amendment applies to protection.

And, Judge, we feel that by not stating at the door that they were there to search for marijuana, they violated the Benefield case, and the Knock-and-Announce Statute.

Judge, the case of State versus Bamber, which is the next one down, basically recites and restates Benefield. This is a 1994 Florida Supreme Court case. And they quote in there the language of Benefield. And, Judge, I want to note that in the Bamber case, the police officers had a warrant and chose not to knock. And the Florida Supreme Court said, Judge, that there was no exigent circumstances for a no-knock warrant.

Why is it that the Polk County Sheriff's Department is taking it upon itself to train its officers, and training younger officers to do knock-and-talks, and take away from you, as a judge, the right to issue search warrants? You are the neutral and detached magistrate that should make that decision, Your Honor. And by doing this, they have usurped your authority. And, therefore, we feel that's unconstitutional, and the evidence should be seized - should be suppressed.

And, Judge, turning to my second argument, is that the consent was not freely and voluntarily given: The facts to support is that when they first went inside the residence, there's been testimony by Ms. Crall and Ms. Thomas that they pushed their way in. They didn't give her a chance to tell them no, or

shut the door in their face. Their foot was in the door; they pushed their way in. That's not freely and voluntarily allowing somebody in your residence.

When they were in the residence, she specifically told them, no, you cannot search, and let me speak with my husband. They did not take that as a no. I'm going to address that in my third point.

But, Judge, they then took her outside from her friend, and allegedly obtained this consent, where they had consent forms in the truck -- or in the car, didn't use them, didn't tell her she had a right to an attorney, didn't tell her she had a right to refuse, didn't tell her anything. And it's clear from Officer Maney's testimony that she was confused. She specifically asked him, what can we do now.

And you heard him testify about how he's versed in federal law and state case law. And he did not even explain to her, you have a right to say no to this search; you have a Fourth Amendment Constitutional right. He didn't do it. He let her misconception grow to gain consent; the whole reason he's there.

Judge, Bumper versus North Carolina, a United States Supreme Court case, which I'm just going to cite for the prosecution -- it's not in your pamphlet. But it says: The prosecutor has the burden by preponderance of the evidence to prove consent was freely and voluntarily given.

Had Ms. Crall said yes when they first came in, that's free and voluntary consent. But allowing them to take her outside after she says no, and coercing her and taking her from her friend, in handcuffs, while her children are inside that residence, is not free and voluntary consent.

And for a case on point, Judge, I'm citing Talavera versus State, 186 So.2d 811, and it's a Florida Second District Court of Appeal decision. And, Judge, in that case, an individual -- there was -- they wanted to serve a warrant -- I'm sorry. They wanted to arrest an individual, so they went to his house

and knocked and asked if they could look around. And the individual, Mr. Talavera said, yes, because he figured he didn't have any other choice because he could have done it, anyways. These are direct quotes on Page 2.

And just as in our case, they never told him he had a right to an attorney. They never told him he had a right not to consent. They never told him he had a right to refuse. And they, in that case, said that his submission to this authority is not voluntary consent. And that's on Page 3. They say: The mere acquiescence in a search is not necessarily a waiver of a valid search warrant. Rather, for an occupant to waive his rights, it must clearly appear that he voluntarily permitted or expressly invited and agreed to the search, being cognizant of his right in the premises. She was not cognizant of her rights in the premises. That's clearly shown by Detective Maney's testimony that says -- where he says, he alleges that she says, what can we do now? But yet he takes it upon himself to do this search. He doesn't take it upon himself to write up a warrant and bring it down here for you or another Judge to sign it, which there's many circuit judges that are out there. So, Judge, I submit to you that this consent is not freely and voluntarily given.

Now, my third point, Judge, is back on the consent, it goes to when she says no. I don't think -- and there's case law that I'll cite in a minute about the Knock and Talk Doctrine -- that a person has a right -- excuse me, a police officer has a right to enter a threshold of a person's residence simply to gain consent to search. I think the case law out there says that you have a right to stand on the doorstep in a public place, which is a doorstep, where any bill collector or anybody else can stand, and ask for consent. To gain consent into a residence by saying let me come inside and talk to you for a minute about something is an ambiguous statement when the officers specifically know why they're there.

So, therefore, Judge when she is inside and finds out by

them that they want to search her residence and she says, no -- every witness that testified here today said that she says, no, you can not do that, let me wait for my husband to get here. At that point in time, any purported authority that -- you know, Mr. Pickard and I disagree on whether they had a right to be on the threshold. But even if you agree with his side, what they were doing there stopped, and they had no right to remain.

And I cite for the court Leslie versus State, which I have the WestLaw cite of 96 WL 34 -- excuse me, 324977. It's a Florida Second District Court of Appeal of June, 1996. And the facts of that case was there was a package that they discovered contained some money. The officers planned to go into the residence when the tracking device went off, and either received a consent to search for the package, or go and get a search warrant at 5:30 p.m. Well, here we are at night, Judge, at 9:30 to 10:00 p.m. Five to six officers in the Leslie case approached the trailer, wearing black camouflage gear, and one carried an automatic rifle. The officers in our case, Judge, carried guns, two of them. They wore a badge. And they were there at approximately 9:30, 10:00 in the evening.

Ms. Leslie refused to consent to search the residence, and the officer on the scene ordered everyone out of the trailer, including Ms. Leslie and them. They went outside, Your Honor. And then Mrs. Leslie consented. And she took -- and she testified at a hearing that she consented because she had a migraine headache and was concerned for her family. And the officers told her it would take two to three hours to get a search warrant.

The Second DCA, on Page 2, Columns 1 and 2 -- excuse me, Paragraphs 1 and 2, ruled: Assuming that they had an initial right to enter onto the property for the purpose of seeking Leslie's cooperation -- assuming they had right to be there -- their authority to remain terminated when she refused.

Okay. Judge, it stopped right then and there. When she

said no, they had no further authority. They should have left and gone outside and done what they thought they should have done.

The last issue I have, Judge, is the knock and talk, which I disagree with Mr. Pickard explicitly about there being cases out there that allow them to do this.

The first case I cite which is in your package is Johnson versus United States, which is a United States Supreme Court decision, 68 S.Ct. 367, it's a 1948 decision, which is still good law, according to Sheppard's. And, Judge, I specifically cite the facts in that case which are identical to what we have here, and that's on Page 3. A detective, a federal detective or one detective -- excuse me. Excuse me, Judge. A detective with the Seattle Police received information from a confidential informer that they used before -- which is one fact that we don't have anybody they've ever used before. In our case, they just have an anonymous tip. They receive information that someone could smell burning opium in a hallway. They recognize this odor, and it led them to Room 1. The officers knocked on the door, and a voice inside asked who is there? And the reply is, Lieutenant Belland.

There was a slight delay, some shuffling in the room, and the defendant opened the door. The same thing here. The officer in Johnson says, I want to talk to you a little bit. And the lady inside the door stepped back acquiescingly, and admitted the officer. He said I want to talk to you about the opium smell in your room. And then, he said, I want you to consider yourself under arrest, because we're going to search the room.

Judge, the case we have before us, the same thing. He's at the door. He says I want to talk to you about something. He pushes his way past her. Then he tells her I want to search, and she says no. But in the case of Johnson, Your Honor, they state, the United States Supreme Court does, in Paragraph 1: Entry to defendant's living quarters, which is the beginning of

the search -- which I'm claiming here -- was demanded under color of office. It was granted in submission to the authority, rather than as an understanding and intentional waiver of constitutional rights.

Paragraph 3 and 4 states: That the point of the Fourth Amendment, which is not often grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw; its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate, instead of being judged by the officer engaged in the often competitive enterprise of the crime.

And at the end of that page, Judge, they say: The right of priv -- when the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by you, a judicial officer; not Detective Maney and not Detective Macek on the street.

And, therefore, Judge, they held that: An officer gaining access to the private living quarters under color of his office and the law of which he personally advised, must then have some valid basis in law for the intrusion. And that's the only reason they got in this house, is because they had a badge and guns and they said we want to come inside and talk to you. And, Judge, that's not proper under the law.

And in further support of that, Judge, I'll cite State versus Gansz, where a probation officer knocked on the door, and told the probationer I have reason to believe that there's some stuff in your house and I want to search it. Mr. Gansz replied: Sure, man, I'm going to sleep. They searched, found marijuana. The officers then seized it, and arrested him.

And the Fourth District Court of Appeal states: The Fourth Amendment puts a restraint on the arm of government. It prevents it from invading the sanctity of a man's home or private quarters except under safeguards calculated to prevent oppression and abuse.

You, Judge, you're the one that draws search warrants; not

them. And they cite in Paragraph 5 that it's clearly necessary for the officers to obtain a search warrant before conducting their search of the Gansz residence. And it was clearly necessary in our case.

An Inevitable Discovery Doctrine, Judge, does not apply here. And I'm going to cite to that effect, and this is my last case, Your Honor, is Alderton versus State, Florida Second District Court of Appeal, 1983 case, the last in your packet, cited at 438 So.2d 1000. In that case, Judge, they had a confidential informant that had sold them marijuana. They had turned him-and asked him to take them to the house where he got the marijuana from and do a buy. The police -- he took them there and showed it to them. The police knocked on the front door and announced that they were police officers and entered. They asked the appellants to search the house, to cooperate and let them search. They refused, and the officers secured the residence and went to obtain a search warrant.

In Paragraph 1, the Second District Court says initially: We note that the entering and occupancy of the house in this case constituted a Fourth Amendment search and seizure. The same thing we have here. And absent exigent circumstances, they may clearly not force entry to a home without a search warrant simply because they think they have probable cause to believe evidence of a crime may be found therein.

And, Judge, in this case, they went and got a search warrant based upon the evidence, and it was still ruled to be an unreasonable search and seizure because they crossed the threshold without a warrant, and improperly.

So, therefore, Judge, the four points I would like the court to consider is, first off: There's no knock-and-announce compliance. That's grounds in and of itself to dismiss this search and to rule in favor of the defendant.

Secondly, the state has not proven by a preponderance of the evidence their burden that any purported consent was freely and voluntarily given.

Thirdly, Judge, when she told them no, no means no in this state. A woman tells you no, and you go further with her, you'll be charged with a sexual battery. If a person in a house tells you no, it means no. And that means you're not to do anything further, you're to stop.

And, Judge, the last thing is, the knock-and-talk based on the Johnson versus U.S. case is not proper in this instance here.

Therefore, Judge we would ask that you grant our motion to suppress with regard to Mr. Crall.

Thank you.

MR. PICKARD: Can I be heard real briefly, Your Honor?

THE COURT: Sure.

MR. PICKARD: Your Honor, the cases that were cited here involving knock and announce are cases involving where police go to someone's house to serve a search warrant or they are there to arrest them; not situations like we have here. And even the statute itself talks in terms of -- which is Florida Statute 901.19, an officer, in order to make an arrest, either by virtue of warrant or when authorized to make an arrest for a felony without a warrant, may break open a door or window, et cetera, et cetera.

Knock and announce does not apply in this case. Otherwise, are you saying any time a police officer goes to somebody's house for whatever purpose -- and police officers have contact with people for a lot of purposes other than serving search warrants and making arrests. They go interview them because they're witnesses and -- witnesses to crimes. They notify them about recovered property, or their car that's been stolen has been located. I mean, are we saying every time they walk up to somebody's door and knock on it for

whatever purpose, they have to stand outside and say we are so-and-so, we are here for this particular purpose, will you please let us in. There is no requirement of knock and announce except for serving search warrants and arrest warrants. And that's not why they were there.

As far as the consent to search being -- in this case, from Ms. Crall being invalid, I think Mrs. Crall's credibility has a lot to be desired here. You have to look at this woman's believability or credibility. First of all, she says they forced their way in to begin, which they deny. Secondly, she says they told her nothing inside about any marijuana that they were there for -- because they received information about marijuana. She says they told them they received information about smoke coming from house. Thirdly, she says there wasn't any marijuana there to begin with, and thinks that they either brought it with them or planted it.

And, secondly, she denies she even consented. Here, she doesn't say -- and I think this is important. She does not say to the court, they forced me to consent or this was an involuntary consent. She says I never consented to begin with. I never at any time told them they could search the house.

Thirdly, the argument has been made, well, when she says no the first time, they can't search, their obligation is to turn around and walk out and leave. Well, that may be so, except for the fact that that was the point in time when they found the marijuana down on the floor. And at that point, when they found the marijuana on the floor, they did not have to immediately turn and walk out and leave. They had a right to do further investigation concerning why that marijuana is there, whose is it was, and how it got there. So they are not required at that point, based on what they saw in plain view, to turn around and just ignore it, which apparently is what the argument is being made to you, that as soon as she said no, you can't search, that their obligation is to just ignore what they saw on the floor and just walk out of the house. And I

don't know of any police officer that's going to -- that's going to do that.

That's all, Your Honor.

THE COURT: Okay. Thank you, gentlemen.

MR. PICKARD: Oh, there is one case I wanted to give you, was dealing with whether the police can, in fact, just walk up to someone and ask for permission to talk to them and permission to search without having any sort of suspicion or probable cause. And this is the U.S. Supreme Court case of Florida versus Bostick, 1991. This arose out of the situation in Fort Lauderdale where police officers would randomly board buses in bus stations and just walk through the aisles of the bus asking passengers can we search your luggage, for no reason, no suspicion, nothing about any particular person that would warrant any belief that they had anything illegal. They were just randomly picking out passengers.

And the Florida Supreme Court, back in '89 or '90, says that practice is illegal. You can't just simply walk through buses and randomly pick out people for no reason and ask them if you can search their luggage. And the U.S. Supreme Court reversed and said as long as the consent is freely and voluntarily given, the police don't have to have any reasonable suspicion, probable cause, or anything else.

And I would give the court that case, which is the case that I think the officers are relying upon when they say that they --

You've already got that?

-- that they can -- that they do not have to have any sort of reasonable suspicion or probable cause to walk up to someone or to knock on someone's door and ask them if they

could consent. The people are free to say no. And if they have no reason to get a search warrant or if there's no voluntary consent, then the police have to leave.

MR. RAFOOL: Judge, I'm not going to talk in real detail about State versus Bostick. I did anticipate the state bringing this argument up. I would point the court out to right under Justice O'Connorrs opinion on 501 U.S. 431, the United States Supreme Court specifically held that we have -- the Fourth Amendment permits police officers to approach individuals at random in airport lobbies and other public places. And I'll stop reading right there, because that case applies to public places and not a private residence, which is a man's castle in our state and in the United States as a whole.

THE COURT: All right. Gentlemen, I find the knock-and-talk procedure is a valuable device, no doubt, but it is subject to -- patently subject to being misused and to circumvent the requirements of a warrant.

To digress in passing, that here the officer had both a recorder, as well as a consent-to-search form, but he elected to use neither, and then has the temerity to stand before the court and says just forget all that garbage, that's unnecessary because I said to take my word for it, quite candidly, I find the testimony of both the officers lacking in credibility. Their testimony and their demeanor just absolutely destroys them as far as credibility is concerned.

I find the entire process to be a ploy that's not only morally offensive, but also constitutionally offensive.

With respect to the knock and announce, my God, even with a warrant, you're required to knock and announce. Certainly without a warrant, then you're required to do no less. I find such acts to be abhorrent. It violates every principle in which this country is founded, and I'm going to grant the motion to suppress.

MR. RAFOOL: Thank you.

(There was a brief recess and the hearing reconvened with the same appearances.)

MR. PICKARD: I think that you are capable of being objective in considering this other case with the same officers, then I certainly have no problem with it.

THE COURT: I have no problem with that, Hardy. I'll lay the cards on the table and let them fall the way I see them.

MR. PICKARD: That's all I can ask.

MR. RAFOOL: Judge, we'll proceed on Thomas. He's outside.

MR. PICKARD: We would call Detective Maney again.

Your Honor, this will be sort of picking up where we left off in the last case.

J.D. MANEY

having been produced as a witness on behalf of the state and having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PICKARD:

Q. Detective Maney, at some point, did a Mr. Robert Thomas arrive at the Crall residence?

A. Yes.

Q. All right. What was going on there at the point where he arrived?

A. The narcotics detectives were all there, already there working the case. And I was sitting in my car and -- when he drove up.

Q. Okay. Had the marijuana inside been found?

A. Yes.

Q. Okay. Had Mr. Alan Crall arrived at the house and been arrested at the time Mr. Thomas showed up?

A. I believe so.

Q. Okay. How did Mr. Thomas get to the house?

A. He drove up in a white Ford Tempo.

Q. Was he by himself?

A. Is this who?

Q. I'm sorry. Robert Thomas.

A. Yes.

Q. Okay. You said he drove up in a white Ford Tempo?

A. Yes.

Q. By himself?

A. Yes.

Q. Tell us what contact you had with him or what he did after he drove up.

A. He pulled up to my left, and he got out and walked around toward the rear. And I got out and walked to the rear and met him, and asked him his name, if he had a driver's license.

Q. Why did you do that?

A. To see who he was.

Q. Okay. He was actually in the driveway of a residence of where you had made some arrests for narcotics offenses or arrests had been made by you or other officers; correct?

A. Yes.

Q. So you did not know who he was; correct?

A. Correct.

Q. Had you asked him to get out of the car, or had he gotten out before you approached him?

A. No. He hadn't done anything wrong, so I couldn't demand his license. That's why I asked.

Q. He was already out of the car?

A. Yes.

Q. You asked him what? Who he was?

A. Yes, and if he had a driver's license.

Q. All right. What response did you get?

A. He found them and handed them to me.

Q. Did he have a driver's license?

A. Yes.

Q. What did you do?

A. I ran him, which would show his license, if he has any warrants.

Q. Was there a warrant?

A. Yes.

Q. Was he arrested based on the outstanding warrant?

A. It was confirmed and, yes, he was arrested for it.

Q. All right. Was his car then searched?

A. Yes.

Q. What was found in the car?

A. As soon as I opened the driver's door, down on the bottom -- on some doors that you have that pocket, and there was a baggie with some kind of white residue. And in the glove box was a Marlboro box with, I believe it was three -- three small bags of white substance. And all -- this was all taken by Detective Murphy.

Q. You were the one who opened the door and found it?

A. Yes.

Q. Okay. From the time that he got out of his vehicle until the point where you searched the car, how much time are we talking about having passed?

A. I would say within five minutes.

MR. PICKARD: Okay. That's all.

THE COURT: All right.

MR. RAFOOL: Briefly, Your Honor.

CROSS-EXAMINATION.

BY MR. RAFOOL:

Q. Now, Detective, you never searched or looked in the vehicle prior to Mr. Thomas handing you his license?

A. Correct.

Q. And when he handed you his license, he had already exited the vehicle, shut the door, and walked around to the rear passenger side of the vehicle?

A. Right near the trunk passenger side, yes.

Q. Okay. So he wasn't on the driver's side of the rear of the vehicle?

A. No.

Q. Okay. And you had no idea of any narcotics being in the vehicle prior to your opening the door and searching it; correct?

A. Correct.

Q. And there was no consent by him to search the car, was there?

A. No.

Q. Why did you search the vehicle?

A. Searching it incident to arrest.

Q. And that's your sole reason, sir?

A. Yes.

Q. And the marijuana was found in the driver's door compartment?

A. It was methamphetamine.

Q. Okay.

THE COURT: I'm sorry. I couldn't hear you.

THE WITNESS: Methamphetamine.

Q. (By Mr. Rafool) Now, let me ask you this: When the warrant came back, you were standing outside the rear of the vehicle with Mr. Thomas?

A. When it showed the hit, yes.

Q. Right. When it showed the hit.

A. Yes.

Q. Then you took Mr. Thomas inside in handcuffs; correct?

A. I believe so.

Q. And placed him in the living room of the Crall residence?

A. I don't know where they put him.

Q. Okay. But you took him inside the residence?

A. Correct.

Q. And then you went back outside the residence?

A. When the warrant was confirmed, yes.

Q. But you had already dropped Mr. Thomas off inside the residence in handcuffs?

A. Correct.

Q. And then you went back outside the residence?

A. I believe so.

Q. And you searched the car?

A. Yes.

Q. So he was nowhere near the outside of the car when you did the search?

A. I don't believe so.

Q. And how much is the distance between the house and the car?

A. I have no idea.

Q. Greater than 20 feet?

A. Maybe.

Q. And this car was not impounded prior to you doing this search, was it?

A. No.

MR. RAFOOL: No further questions, Judge.

MR. PICKARD: No other questions, and no other witnesses.

THE COURT: All right.

MR. RAFOOL: Judge, I would just like to call my client.

THE COURT: Very well.

ROBERT ALLEN THOMAS

having been produced as a witness in his own behalf and

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RAFOOL:

Q. Mr. Thomas, please state your name for the record.

A. Robert Allen Thomas.

Q. Did the officers tell you on February 28th, 1997, that they had a search warrant for either the residence at 1003 Meadow Avenue or either your car?

A. No, sir.

Q. Did you ever see a search warrant?

A. No, sir.

Q. And was -- were you driving a vehicle on that day?

A. Yes, sir.

Q. What kind of car was it?

A. '84 Tempo.

Q. Okay. Did you consent to any searches of that vehicle?

A. No, sir. It wasn't mine.

Q. Is that a vehicle you customarily drive?

A. No, sir.

Q. Had you received permission to drive it?

A. Yes, sir.

MR. RAFOOL: No further questions, Judge.

MR. PICKARD: No questions.

MR. RAFOOL: Sit down, Mr. Thomas.

THE COURT: Gentlemen, what have you got? Who's going to argue first?

MR. PICKARD: I can.

Your Honor, I don't think this is a case where credibility of the witnesses really has that much to do with it. I think it's a legal question. I don't think there's too much dispute as to what happened.

The question, I guess, is, are the -- when they arrest a person who had recently been in an automobile and he gets out and they arrest him, do they have the right to search the car, which is really a legal question. And there are some cases that I would give to the court which basically indicate that the police do have the right to search the car under the Belton Doctrine, which is the search of a car incident to the arrest of an individual in it.

In Belton, the police had stopped a car for some traffic violation, and there were three or four males in the car. And I think they arrested the driver for some traffic violation or something, and then searched the entire car, and found something, as I recall, in a jacket in the backseat or something.

And the question arose is, if you arrest a driver of a car

for a traffic violation, can you search the entire car? And the U.S. Supreme Court says, yes, you can. That has since been extended to if you arrest anyone in the car. It doesn't even have to be the driver, although in this case, Mr. Thomas was the driver. You can search the car.

And it has been extended by Florida cases to if the person has recently been an occupant of the car and he gets out, then you arrest him when he's out of the car, the theory that you cannot -- a person cannot get around the Belton rule simply by getting out of the car before the police are able to arrest you.

And the case -- and I'm not going to go through all the factual situations. I will simply give them to the court. State versus McClain, 490 So.2d 1308 would be one. State versus Smith, at 662 So.2d 725. And the most recent one I could find is State versus Jeremiah Johnson. I only have the Florida Weekly cite at 22 Florida Law Weekly Page D1392, June 6 of 1997.

Let's see. Basically, Your Honor, the state's position is, when -- when they arrested him on the warrant, that gave them the right to search the vehicle that he had recently exited from.

THE COURT: All right. Brandon, what have you?

MR. RAFOOL: Judge, I'm only going to cite one case to the court, then I'm going to give you a copy of that.

Your Honor, State versus Howard, which I just Shepardized on the 16th of June, so it's still good case law. It's a one-page case, Judge, and the facts speak for themselves.

Basically, the individual, Howard, pulls up at a convenience store, got out of his car with the pouch in his hand, saw the officer, put the pouch back in his car. The officer knew this individual previously, and knew he had an outstanding warrant, verified it, and then arrested him.

The trial court ruled that the search of the appellant's

vehicle is not a search incident to, because the appellee had exited his vehicle. And until it was a validity -- outstanding arrest warrant was validated -- and then the last sentence, Judge, of the first page, they said the officers did not have a probable cause for the warrantless search of the car as an incident to his valid arrest.

We think that's significant in this case, Judge, because, as the testimony from the officer shows, that Mr. Thomas exited the vehicle, shut the door, walked around to the back, which is totally opposite from the driver's side door and several feet away from the rear of the driver's side of the car, he is then arrested for this outstanding warrant, taken inside the house some 20 feet away, or however big this difference is, and placed inside the house. Then the officer goes back and searches the vehicle.

I think the state's argument would be better taken had the officer arrested him, stood him there, and searched, right then and there. But, again, I still don't think that's enough under the State versus Howard, which cites to the Belton case.

THE COURT: Thank you.

MR. RAFOOL: Suppression should be granted on the Howard, State versus Howard basis.

Thank you, Your Honor.

THE COURT: Y'all have covered me up with some laws, I want to read before I rule on this one. It seems we have two totally different and irreconcilable positions on this. I'm going to see if I can reconcile them. If not, I guess the Appellate Court is going to have to.

Thank you, gentlemen. I'll get you a ruling as quick as possible.

MR. RAFOOL: Judge, do I need to have my clients here for stats if I have them here tomorrow -- if I continue them?

MR. PICKARD: Tomorrow is pretrial.

THE COURT: I'm not sure. It's unlikely I can rule, so I'm not sure.

MR. RAFOOL: I don't think we have a speedy trial problem.

THE COURT: Do you want to continue it one cycle, give you a chance -- do you have any problem with that?

MR. PICKARD: I don't know that it would be a problem, no, sir.

THE COURT: All right.

MR. RAFOOL: Thank you, Your Honor.

THE COURT: If it would facilitate things, there's no way you can get a meaningful ruling on this case by tomorrow, so I will continue the pretrial for one cycle and take it from there. All right.

(Hearing concluded at 4:29 p.m.)

STATE OF FLORIDA

COUNTY OF POLK

I, Linda A. McGill, Registered Professional Reporter and Notary Public duly qualified in and for the State of Florida, do hereby certify that I stenographically reported the foregoing hearing and that the transcript, consisting of Pages 1 through 109 is a true record of the proceedings.

I further certify that I am neither attorney nor counsel for, nor related to nor employed by any of the parties to the action in which this hearing was taken; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

Dated this 19th day of September, 1997.

_____

LINDA A. McGILL, RPR

The original of this transcript was ordered by Hardy Pickard, Esquire and furnished to the Clerk of the Court.

THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

VS. CASE NO. CF97-01296C

ROBERT THOMAS,

Defendant.

ORDER GRANTING MOTION TO SUPPRESS

This cause came before the Court on Defendant's Motion to Suppress on the 21st day of July, 1997. The Court heard testimony and arguments, and finds:

Facts: Defendant drove his white Ford Tempo onto the premises of a friend, parked it and got out. Detective Maney, who was legitimately on the premises in connection with another matter, intercepted the defendant as he walked away and asked for identification, whereupon defendant produced his driving license. Maney caused a check to be made that resulted in a "hit", as there was an outstanding warrant for defendant. Maney arrested the defendant on that warrant and "as an incident to arrest" searched defendant's car, wherein contraband was found. It is that contraband to which the subject motion is addressed.

Law: From the foregoing facts emerges the question, "Can an officer under these circumstances lawfully search a vehicle, not occupied by defendant, as an incident to arrest?"

The Court must here 'buy in" to the law asserted by the defense as controlling. Judge Cowart, in *State v. Howard*, 538 So.2d 1279 (51 DCA, 1989), said, in essence, that where a

person has exited his vehicle and was then arrested on an outstanding warrant, a search of the car was unlawful. That pronouncement appears "on all fours" here. Indeed, the Court went on to say, "... the officer did not have probable cause for a warrantless search of the car. There was no valid need or reason to search (the) vehicle as an incident to his valid arrest".

It is thereupon

ORDERED that the subject Motion to Suppress is granted.

DONE AND ORDERED at Bartow, Polk County, Florida, this 23 day of July, 1997.

ROBERT E. PYLE, Circuit Judge

Copies furnished to:
Brandon J. Rafool, Esq.
Hardy 0. Pickard, Esq.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA	)	
	)	
Appellant	)	
	)	
v.	)	Case No. 97-03576
	)	
ROBERT A. THOMAS,	)	
	)	
Appellee	)	
_____	)	

Opinion filed May 15, 1998.

Appeal from the Circuit Court
for Polk County;
Robert E. Pyle, Judge.

Robert A. Butterworth, Attorney
General, Tallahassee, and Patricia E.
Davenport, Assistant Attorney General,
Tampa, for Appellant.

James Marion Mooreman, Public Defender,
Bartow, and Cynthia J. Dodge,
Assistant Public Defender, Bartow,
for Appellee.

PARKER, Chief Judge.

The State appeals the final order granting Robert A. Thomas's motion to suppress methamphetamine and drug paraphernalia obtained as a result of a search of Thomas's car incident to an arrest on an outstanding warrant. We reverse based upon New York v. Belton, 453 U.S. 454 (1981).

The following evidence was adduced at the hearing on the motion to suppress. Detective Maney was sent to the residence of Mr. and Mrs. Crall on information that marijuana was being sold from the residence. Maney knocked on the door, talked to the owners of the residence, and obtained consent to search the residence. Upon arrival, Maney had no intent to make an arrest. After Maney located marijuana inside the residence, the narcotics detectives arrived.

While the detectives were still in the residence, Maney sat outside the residence in his patrol car. Maney observed Thomas drive up to the house, park his car in the driveway, and get out. As Thomas walked toward the rear of the car, Maney got out of his vehicle and met Thomas at the rear of Thomas's car. Maney asked Thomas his name and whether he had a driver's license. Maney made the request because Thomas was in the driveway of a residence where arrests were being made for narcotic offenses. At that time, Maney had no idea that there were narcotics in Thomas's car.

A check of Thomas's driver's license reflected an outstanding warrant. Maney arrested Thomas and took him inside the Crall residence. Maney then went back outside and searched the car incident to Thomas's arrest. As soon as Maney opened the driver's door of the car, he found a baggie with some type of white residue. Maney also found three small bags of a white substance in the glove box. All of the baggies tested positive for methamphetamine. Five minutes elapsed between the time that Thomas exited his car until Maney searched the car.

Following a hearing, the trial court granted the motion to suppress based on State v. Howard, 538 So. 2d 1279 (Fla. 5th DCA 1989). The trial court concluded that where an individual has exited a vehicle and subsequently is arrested on an outstanding warrant, a search of the vehicle is unlawful. We conclude that this finding was error.

The law is well settled that when a law enforcement officer has made a lawful custodial arrest of the occupant of an automobile that an officer may, incident to the arrest, search the passenger compartment of that vehicle. See Belton, 453 U.S. at 460. This court consistently has applied the rule contained in Belton recognizing that a court may not determine on a case-by-case basis whether the interior of an automobile is within the scope of a search incident to an arrest. See Chapas v. State, 404 So. 2d 1102 (Fla. 2d DCA 1981); see also State v. Smith, 662 So. 2d 725 (Fla. 2d DCA 1995).

There does not have to be a nexus between the arrest of the occupant of a vehicle and the subsequent search of that vehicle. Moreover, a defendant does not have to be in the vehicle at the time of the arrest and subsequent search in order for the search to be valid under Belton. See State v. McLendon, 490 So. 2d 1308, 1309 (Fla. 1st DCA 1986) (court will not "distinguish between arrests of persons in the car from arrests of persons recently vacating the car . . . ."). As noted by the court in State v. Johnson, 696 So. 2d 880 (Fla. 5th DCA 1997), the occupant of a vehicle cannot avoid the consequence of the Belton rule merely by stepping outside the automobile as officers approach. The circumstances in this case clearly fall within the Belton rule.

In this case, the trial court relied on Howard, 538 So. 2d 1279. In Howard, the police officer knew that there was an outstanding warrant for the defendant and followed the defendant's vehicle. The defendant stopped at a convenience store and exited his vehicle. At that time, he saw the officer and immediately placed the pouch that he was carrying back

into his vehicle and locked the vehicle. The police officer approached the defendant and placed him under arrest. The officer refused to let the defendant's brother, who had just arrived, take the defendant's car keys. A search of the defendant's vehicle revealed contraband. The Fifth District Court, citing State v. Bennett, 516 So. 2d 964 (Fla. 5th DCA 1987), concluded that the search of the defendant's vehicle was not a search incident to a valid arrest. See Howard, 538 So. 2d at 1280.

The trial court's reliance on Howard is misplaced. In a more recent Fifth District Court decision, State v. Saufley, 574 So. 2d 1207 (Fla. 5th DCA 1991), the Fifth District upheld the search of a vehicle incident to an arrest. The defendant was observed driving in an erratic manner. After the defendant stopped and exited the vehicle, he appeared to have difficulty maintaining his balance and exuded the strong smell of alcohol. The defendant was arrested for driving under the influence. When the officer placed him in the patrol car, the defendant's girlfriend accosted the officer. Two or three minutes elapsed before the officer finally was able to search the vehicle at which time he found cannabis. See id. at 1209.

The defendant argued that because he was arrested after he was outside the vehicle, the search was not incident to the arrest. The Fifth District Court disagreed, applying Belton. See id. Furthermore, the court noted that the defendant's reliance on Bennett was misplaced because the court had held in Bennett that an arrest which was a pretext to carrying out a preplanned, warrantless search of a vehicle could not validate the subsequent search. See id.

We can think of few incidents where a driver will not be out of the vehicle when an arrest is made. Therefore, as long as the arrest is not under a preplanned pretext to conduct a warrantless search of the driver, we conclude that the bright line test in Belton applies. Thomas's arrest was not a pretext to carry out a preplanned warrantless search of his vehicle.

The officer did not follow Thomas to the Crall residence because the officer knew of an outstanding warrant for his arrest, nor was Thomas under surveillance which provided the officer with an opportune time to effect his arrest.

Accordingly, the trial court erred in suppressing the evidence obtained during a lawful search incident to an arrest. The order is reversed.

CAMPBELL and QUINCE, JJ., Concur.

Supreme Court of Florida

No. 93,070

ROBERT A. THOMAS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[October 14, 1999]
REVISED OPINION

HARDING, C.J.

We have for review State v. Thomas, 711 So. 2d 1241 (Fla. 2d DCA 1998), which expressly and directly conflicts with the opinion in State v. Howard, 538 So. 2d 1279 (Fla. 5th DCA 1989). We have jurisdiction pursuant to article V, section 3(b)(3) of the Florida Constitution. For the reasons expressed below, we quash the decision of the Second District Court of Appeal in Thomas.

The facts of Thomas are as follows. On the evening in question, Robert Thomas entered the driveway of a residential home in which police were already present making arrests for narcotics offenses. While the detectives were in the residence, Officer Maney waited outside the residence in his patrol car.

Officer Maney observed Thomas drive up to the house, park his car in the driveway, and get out of the vehicle. Upon exiting, Thomas walked to the rear of his vehicle, where Officer Maney met him and asked him his name and whether he had a driver's license. A check of Thomas's driver's license revealed an outstanding warrant for a probation violation. Officer Maney arrested Thomas and took him inside the residence. Officer Maney originally was unaware that there were narcotics in Thomas's car. However, a subsequent search after Thomas's arrest resulted in the discovery of a plastic bag containing white residue on the bottom of the driver's side door and three small bags of a white substance in the glove box. All of the bags tested positive for methamphetamine. Five minutes elapsed between the time Thomas exited his car, was placed under arrest, and was brought into the residence and Officer Maney's subsequent search of the vehicle.

Following a hearing, the trial court granted Thomas's motion to suppress based on State v. Howard, 538 So. 2d 1279 (Fla. 5th DCA 1989). The district court reversed, relying on New York v. Belton, 433 U.S. 454 (1981), and held that because the search of the vehicle was not under a preplanned pretext to conduct a warrantless search, the search was lawful because it was incident to the valid arrest of Thomas. See Thomas, 711 So. 2d at 1243.

In Howard, the defendant was followed by a police officer who had knowledge of an outstanding warrant for his arrest for a probation violation. Howard drove into the parking lot of a convenience store, and upon exiting his car with a pouch in his hand, he spotted the officer and placed the pouch back into his car and locked the door. After Howard was arrested on the warrant, he then instructed his brother who was present at the scene not to allow the police to search his car. However, the officer took the keys from Howard's pocket and searched the vehicle and found contraband.

The trial court suppressed the evidence and the district court affirmed. The district court held that the officer did not have probable cause for a warrantless search of the car. The district court stressed that Howard had already exited his car and locked it. The district court stated that even though the officer's suspicions may have justifiably been aroused, there was no legitimate need or reason to search Howard's car as incident to his valid arrest. See Howard, 538 So. 2d at 1280.

The district court in Thomas distinguished Howard based on the fact that the officer in Howard was in reality conducting a preplanned warrantless search, whereas in Thomas the officer did not know Thomas, nor was he aware of the fact that there was an outstanding warrant for his arrest. In reaching its decision, the district court in Thomas relied on Belton's bright-line rule regarding searches incident to arrests: "[W]e hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." New York v. Belton, 453 U.S. 454, 460 (1981) (footnote omitted). While we do not question the practicality of this bright-line test, nor its application to arrests that are initiated by the conduct of an officer, we believe there must be a distinction drawn when an individual voluntarily exits his car without provocation from law enforcement personnel and without knowledge of their presence.

In Belton, a New York State policeman was passed by another automobile driving at an excessive rate of speed. The officer gave chase, overtook the speeding vehicle, and ordered its driver to pull over to the side of the road and stop. After comparing the vehicle registration to the driver's licenses of the driver and the three passengers, one of whom was Belton, the officer discovered that none of the men owned the car, nor were they related to the owner. In the course of verifying their

identification, the officer smelled marijuana emanating from the vehicle, and also saw an envelope marked "Supergold" on the floor of the car, which he associated with marijuana. The officer then directed the men to get out of the car and placed them under arrest for unlawful possession of marijuana. He opened the envelope, which contained marijuana, searched the passenger compartment, and found cocaine in a pocket of a leather jacket found in the car.

The United States Supreme Court in Belton referred to Chimel v. California, 395 U.S. 752 (1969), for the proposition that a lawful custodial arrest justifies a contemporaneous search of an individual without a search warrant. The Court in Chimel concluded that such searches were necessary to (1) remove any weapons that the arrestee might have and (2) prevent the concealment or destruction of evidence. Relying on this reasoning, the Court in Belton held that when an officer has made a lawful arrest of the occupant of a vehicle, he may search the passenger compartment of that vehicle as long as it is in within the narrow time frame incident to the arrest. The Court did not state that the Chimel factors must be established before the vehicle can be searched; rather, the Court set up a bright-line rule to be applied in all cases. Florida's district courts have consistently applied this bright-line principle to analogous situations. See Shaw v. State, 449 So. 2d 976 (Fla. 1st DCA 1984) (affirming denial of motion to suppress, even though defendant was handcuffed and placed in the officer's vehicle before the search was conducted); Chapas v. State, 404 So. 2d 1102 (Fla. 2d DCA 1981) (upholding Belton search after defendant was ordered out of the car, arrested for driving while intoxicated, and placed in a police vehicle); State v. Valdes, 423 So. 2d 944 (Fla. 3d DCA 1982) (holding the search of vehicle justified as a contemporaneous incident of the lawful arrest of defendant, notwithstanding that defendant was removed from the vehicle and placed in a nearby police cruiser); State v. Saufley, 574 So. 2d 1207 (Fla. 5th DCA

1991) (upholding Belton search where defendant was pursued by an officer with siren on and lights flashing, arrested for driving under the influence, and placed in a patrol car, and two to three minutes later the officer searched the vehicle); see also United States v. White, 871 F.2d 41 (6th Cir. 1989) (holding that Belton governs when an arrestee is removed from the car prior to the time of search); United States v. Karlin, 852 F.2d 968, 971-72 (7th Cir. 1988); United States v. Cotton, 751 F.2d 1146, 1149 (10th Cir. 1985); United States v. McCrady, 774 F.2d 868, 871-72 (8th Cir. 1985).

However, when searches occur beyond the scope of Belton's bright-line intent, the factors in Chimel of officer safety and evidence preservation must be present in order for a search incident to arrest to be lawful. The Supreme Court addressed the parameters of Belton's application in Knowles v. Iowa, 525 U. S. 113 (1998). In Knowles, the defendant was only issued a traffic citation, and was not placed under arrest. Chief Justice Rehnquist, writing for the Court, held that a full search of an automobile pursuant to issuance of a citation for speeding violated the Fourth Amendment. The Court declared:

> Here we are asked to extend that "bright-line rule" to a situation where the concern for officer safety is not present to the same extent and the concern for the destruction or loss of evidence is not present at all. We decline to do so.

Id. at 118-19. Not finding the circumstances to be analogous to the circumstances that were the foundation to the Belton decision, the Court declined to apply the bright-line test. Id.

In examining the application and limitations of Belton, we believe the Second District Court of Appeal in Chapas was correct in interpreting Belton as "establishing a rule applicable

to all cases involving the arrest of a recent occupant of an automobile." See Chapas, 404 So. 2d at 1104. However, the court in Chapas also stated that "[i]n this case, as in the Belton case, appellant was the occupant of an automobile who had been removed from the vehicle and placed under arrest." Id. at 1104-05 The district court compared the facts of its case to Belton, found the circumstances to be analogous, and therefore applied the bright-line rule. Hence, it can be inferred that the bright-line rule does not apply, as clarified by Knowles, when its application has been extended to a situation not contemplated by the Supreme Court in Belton. Rather, the Chimel factors of threat to officer safety or the necessity of preservation of evidence must be present to validate the search.

In State v. Vanderhorst, 419 So. 2d 762 (Fla. 1st DCA 1982), the defendant was arrested for being intoxicated, and a subsequent search of his car revealed four quaaludes. The confrontation with the officer and the subsequent arrest and search were two-and-one-half hours after defendant's vehicle got stuck in the mud. The district court stated:

> Because Belton incorporated within its opinion that language from Chimel limiting the scope of an officer's search which is reasonably incident to a lawful arrest, it follows that unless the arrestee was himself a recent occupant of the vehicle, the Belton rule has no applicability.

Id. at 764. The district court stressed that Chimel's justification was to deter an attempt made by the arrestee to remove any weapons that might aid in an escape, as well as to prevent the concealment or destruction of evidentiary items. Because the district court did not find the facts to be analogous to Belton, in that the timeliness was lacking, the court then shifted its focus to the concerns of officer safety and evidence preservation, which the court held could not be present at a

time so far removed, and accordingly ruled the search was invalid. Again, when the foundation of Belton is extended beyond its original parameters, the bright-line rule is not automatically invoked.

The issue for us to decide in the present case is whether Belton extends to a situation where the first contact the defendant has with the officer occurs after exiting the vehicle. We find the recent analysis of the Sixth Circuit Court of Appeals in United States v. Hudgins, 52 F.3d 115, 119 (6th Cir. 1995), persuasive:

> The search of an automobile is generally reasonable even if the defendant has already been removed from the automobile to be searched and is under the control of the officer.
>
> Where the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant, while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile), a subsequent search of the automobile's passenger compartments falls within the scope of Belton and will be upheld as reasonable. See United States v. Strahan, 984 F.2d 155, 156 (6th Cir. 1993). . . . Our decisions have consistently upheld the search of the passenger compartment of an automobile when the officer initiated contact with the defendant while the defendant was still within the automobile later searched, regardless of whether the defendant was arrested while actually occupying the automobile or after having recently been removed from the

> automobile. See United States v. Thomas, 11 F.3d 620, 628 (6th Cir. 1993); United States v. Patterson, 993 F.2d 121, 122-23 (6th Cir. 1993) (per curiam); [United States v.] White, 871 F. 2d [41], 44 [(6th Cir. 1989)]; United States v. Hatfield, 815 F.2d 1068, 1071-72 (6th Cir. 1987). However, where the defendant has voluntarily exited the automobile and begun walking away from the automobile before the officer has initiated contact with him, the case does not fall within Belton's bright-line rule, and a case-by-case analysis of the reasonableness of the search under Chimel becomes necessary. See Strahan, 984 F.2d at 159 (stating that Belton was inapplicable and concluding that the search was unreasonable under Chimel).

(Emphasis added; citations omitted.)

We must caution, however, that in adopting this rationale, this Court is mindful that the arrest and subsequent search should not be invalidated merely because the defendant is outside of the automobile. The occupants of a vehicle cannot avoid the consequences of Belton merely by stepping outside of the vehicle as the officers approach. See United States v. Mans, 999 F.2d 966, 968-69 (6th Cir. 1993) (upholding Belton search where officer's first verbal contact with defendant was when defendant was outside the car on ground that officer had initiated contact with defendant earlier when defendant knew he was being followed by officer); State v. McLendon, 490 So. 2d 1308, 1309 (Fla. 1st DCA 1986) (highlighting the fact that "[t]o distinguish between arrests of persons in the car from arrests of persons recently vacating the car serves to severely diminish the purpose of the Belton decision").

In conclusion, we hold that Belton's bright-line rule is limited to situations where the law enforcement officer

initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant, and the officer subsequently arrests the defendant regardless of whether the defendant has been removed from or has exited the automobile. Applying the aforementioned analysis to the present situation, the record is clear that the defendant did not exit the vehicle upon the direction of the law enforcement officer. Because Belton does not apply, the trial court must determine whether the factors in Chimel justify the search of Thomas's vehicle. See Hudgins, 52 F. 3d at 199 (concluding that where Belton is inapplicable, then "a case-by-case analysis of the reasonableness of the search under Chimel becomes necessary"). Based on the record in front of us, we are unable to ascertain whether Officer Maney's safety was endangered or whether the preservation of the evidence was in jeopardy. Under our interpretation, these findings are critical to a determination of the outcome, and therefore we quash the decision under review and remand for further proceedings consistent with this opinion.

It is so ordered.

SHAW, ANSTEAD, PARIENTE and LEWIS, JJ., concur.

WELLS, J., concurs in part and dissents in part with an opinion.

QUINCE, J., recused.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

WELLS, J., concurring in part and dissenting in part.

I concur in the result in this case because I believe that the United States Supreme Court decision in Knowles v. Iowa, 525 U.S. 113 (1998), is a Supreme Court application of the Fourth Amendment to the United States Constitution that is sufficiently analogous to control the specific facts here. In this case there was no reasonable basis related to the vehicle to search Thomas; nor was there an arrest made related to the vehicle.

However, I dissent from the dicta which places serious limitations on New York v. Belton, 453 U.S. 454 (1981), that are not within the United States Supreme Court's decision. Pursuant to article I, section 12, we are bound by interpretations in respect to the Fourth Amendment by the United States Supreme Court. In Belton, the court held only that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." Id. at 460. Belton does not add as a condition "where the law enforcement officer initiates contact with the defendant either by actually confronting the defendant or signaling confrontation with the defendant." The reason for this bright-line rule is officer safety, which is equally as much a concern whether the officer initiates the contact, actually confronts the person, or the person voluntarily exits the vehicle as long as the connection with the vehicle is proximate to the arrest.

Application for Review of the Decision of the District Court of Appeal - Certified Direct Conflict of Decisions

Second District - Case No. 97-03576

(Polk County)

James Marion Moorman, Public Defender, and Cynthia J. Dodge, Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, Robert J. Krauss, Senior Assistant Attorney General, and John W. Klawikofsky, Assistant Attorney General, Tampa, Florida,

for Respondent